2007-2008

SENATE JUDICIARY I COMMITTEE

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY COMMITTEE
2007-2008 SESSION
Senator Martin L. Nesbitt, Chairman

Dan Clodfelter, Vice-Chairman
Room 408 LOB – 7158331

Sen. R. C. Soles Vice-Chairman
Rm 2022 - 733-5963

Sen. Phil Berger Vice-Chairman
Rm 1026 – 715-2525

Senator Charlie Albertson
525 LOB -733-5705

Sen. Julia Boseman
Rm 309 LOB – 715-2525

Sen. Andrew Brock
Rm 1119 – 715-0690

Sen. Harry Brown
620 LOB - 715-3034

Sen. Pete Brunstetter
Rm 1119 – 733-7850

Sen. Janet Cowell
Rm 1028 – 715-6400

Sen. Malcolm Graham
Rm 620 LOB – 733-5650

Sen. David Hoyle
300 A LOB - 733-5734

Sen. Clark Jenkins
308 LOB - 715-3040

Sen. Ellie Kinnaird
Rm 2115 – 733-5804

Sen. Vernon Malone
Rm 313 LOB – 733-5880

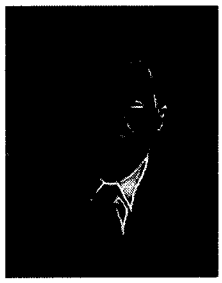
Sen. Floyd McKissick
Rm 621 LOB 733-4599

Sen. Tony Rand
300 C LOB - 733-9892

Committee Staff:
Erika Churchill
Bill Gilkeson
Kara McCraw
Hal Pell
Denise Huntley, Research Assistant
733-2578
Jan Lee, Committee Assistant
715-3001

NORTH CAROLINA GENERAL ASSEMBLY

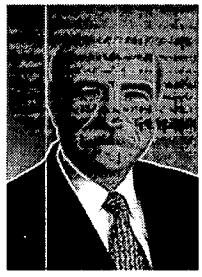
SENATE JUDICIARY I COMMITTEE
2007-2008 SESSION



Senator Martin Nesbitt
Chairman



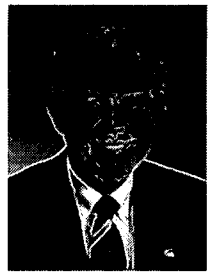
Senator Phil Berger
Vice Chairman



Senator Dan Clodfelter
Vice Chairman



Senator R. C. Soles
Vice Chairman



Senator Charlie Albertson
Member



Senator Julia Boseman



Senator Andrew Brock



Senator Harry Brown



Senator Pete Brunstetter



Senator Janet Cowell



Senator Malcolm Graham



Senator David Hoyle



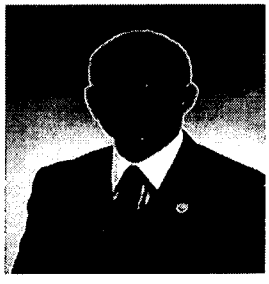
Senator Clark Jenkins



Senator Ellie Kinnaird



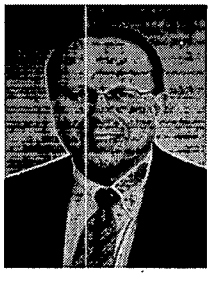
Senator Vernon Malone



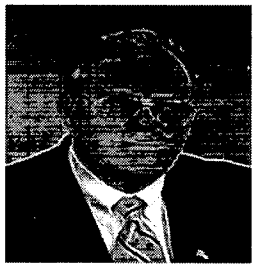
Senator Floyd McKissick



Senator Tony Rand



Senator Richard Stevens



Senator Jerry Tillman

Senate Judiciary I Committee
March 1, 2007
Minutes

The Senate Judiciary I Committee held its first meeting of the 2007 Session on Thursday, March 1, 2007 at 10:00 a.m. in Room 1027 of the Legislative Building. A quorum was present.

Committee Chairman, Senator Martin Nesbitt, called the meeting to order and had members of the committee and staff introduce themselves.

Senator Nesbitt told the committee that there would be no vote on the bills on the agenda today. He then recognized Senator Julia Boseman to explain **SB 229** *(Murder/Violation of Prot. Order).* She introduced Benjamin David, District Attorney from the 5th District to speak on the bill.

Mr. David showed the committee photographs of victims who had been shot by estranged husbands or a boyfriend who had filed Protective Custody orders. He then played a recording of a 911 call from Gail Tice Hewson, a woman who lived in Wilmington, who was killed by her estranged husband who had a Domestic Violence Protective Order filed against him.

Mr. David explained that **SB 229** would make the murder of a person protected under a domestic violence protective order, a Class A felony, with a sentence of life in prison without parole. This legislation would cut out the excuses such as being "voluntarily intoxicated or in the heat of passion" which mostly lead to a conviction of voluntary manslaughter. Mr. David felt that, if a defendant is served with a Protective Order and brings about the victim's demise, he should be charged with first degree murder. He said this is not about expanding the death penalty, but simply elevates the offense to first degree murder.

Extensive discussion followed and the bill was carried over.

The meeting adjourned at 10:50 a.m.

Senate Bill 229 and the Analysis for Senate Bill 299 are attached to these Minutes as Attachments 1 and 2, respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 229

Short Title:	Murder/Violation of Prot. Order.	(Public)
Sponsors:	Senators Boseman; Jones and Rand.	
Referred to:	Judiciary 1 (Civil).	

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CLASS A FELONY WITH LIFE IMPRISONMENT WITHOUT PAROLE IF A PERSON WHO WAS THE RESPONDENT OF, AND SUBJECT TO, A DOMESTIC VIOLENCE PROTECTIVE ORDER MURDERS THE PETITIONER WHO OBTAINED THE ORDER, OR SOME OTHER PARTY THAT HAD BEEN DESIGNATED AS A PERSON PROTECTED BY THE ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under ~~17~~18 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. ~~Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000.~~ Unless the conduct is covered under some other provision of law providing greater punishment, if a murder is committed (i) by a person who was a respondent and subject to a valid protective order entered pursuant to Chapter 50B of the General Statutes, by the courts of another state, or the courts of an Indian tribe, and (ii) the murder victim

was the petitioner, minor family member, or any other person designated as a protected party by the court order, then the murder shall be deemed to be in the first degree, a Class A felony, and any person who commits such murder shall be punished with imprisonment in the State's prison for life without parole. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 229: Murder/Violation of Prot. Order

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	March 1, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel

SUMMARY: This act would make the murder of a person protected by a domestic violence protective order a Class A felony, with a sentence of life in prison without parole. The act also conforms the first degree murder statute to a United States Supreme Court ruling. The act is effective December 1, 2007, and applies to offenses occurring on or after that date.

CURRENT LAW: In 2005, the United States Supreme Court held, in *Roper v. Simmons*, that execution of a person convicted of capital murder, who was under 18 years of age at the time of the homicide, was in violation of the Eighth and Fourteenth Amendments to the U. S. Constitution. The North Carolina first degree murder statute provides that persons who under 17 years of age may not be executed, unless the murder was committed while serving a murder sentence, or while on escape from prison while serving a murder sentence.

BILL ANALYSIS:

- The act would change the age of eligibility for capital punishment from 17 to 18 years of age, so that the first degree murder statute would not contain an unconstitutional provision.
- The act would create a new offense under the first degree murder statute. The respondent of a domestic violence protective order who murders a person protected by the order would be a Class A felon, with a sentence of life in prison without parole. The amendment includes language that gives the District Attorney the discretion to charge the murder under the capital murder provisions.

EFFECTIVE DATE: The act is effective on December 1, 2007, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 1, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alastair Macaulay	NC Home Builders Assoc.
Octavia Rainey	N.C. Fane Share
Bob Hall	Democracy North Carolina
Melissa Price	Young Democrats
[illegible]	none
Jack Register	NC Assoc of Social Workers
[illegible]	NC Assoc of Social Workers
Preston Howard	NCIC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 1, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Catherine Davis	ElectriCities of NC
Paul Pulley	NCATL
[illegible]	R Christian assoc.
John Lonsdeth	GRNC
Roselle E. Margolis	
Jim Blackburn	Association of County Commissioners and friend of Lisa M.
Lisa Martin	NC Home Builders + friend of Jim
Paul Meyer	NCACC -
R. Paul Wilms	NCHBA
Rob Schofield	NC Policy Watch
Andy Romanet	NCLM
[illegible]	Multi Unit

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 1, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beth Faeckling	NCCADV
Dean Baumgarner	family homicide survivor
Mary Ann Lama	Domestic Violence Shelter & Services, Inc Wilmington, NC.
Rene [illegible]	Domestic Violence Shelter & Services, Inc. Wilmington, NC 28402
Paula A. Hoy	LWVNC
Louise Romanow	LWVNC
Jason Courage	NC Policy Watch
Jennifer Willis	Wake County Gvt.
Christine Wunsche	IOG - Daily Bulletin
Cherie Poucher	Wake Co. Board of Elections, Director
John Gilbert	Wake Co Board of Elections, Chairman

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 1, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christ Heagarty	NC Center for Voter Education
Amber Lueken Barwick	Conference of DAs
Julia Leggett	Alliance of Disability Advocates. CIL
Stephanie David	interested observer
Gary O. Bartlett	SBE
Johnnie McLean	"
Damon Circosta	NC Center For Voter Ed.
Lisa Kimbrough	NCCASA
Sarah Preston	ACLU-NC
[illegible]	NCATL
John Madler	NC Sentencing Commission

Senate Judiciary I Committee
March 6, 2007
Minutes

The Senate Judiciary I Committee met on Tuesday, March 6, 2007 at 10:00 a.m. in Room 1027 of the Legislative Building. A quorum was present.

Senator Nesbitt called the meeting to order and recognized Senator Boseman to explain **SB 9** (DV Order/No Firearm Purchase) to the Committee.

A proposed Committee Substitute (PCS) for **SB 9** was distributed to the members and Senator Rand moved that it be adopted for consideration. The motion passed.

Senator Boseman explained that the bill would require that a respondent be prohibited from purchasing, or attempting to purchase, a firearm upon specified findings by the court issuing a domestic violence protective order.

Staff Attorney, Hal Pell, explained that the act provides that a domestic violence protective order shall include a provision that prohibits the purchase, or attempted purchase, of a fire arm if the court finds:

- That the respondent attempted to cause, or intentionally caused, bodily injury to the plaintiff, or to a minor living with the plaintiff, or
- That the respondent placed the plaintiff, or a member of the plaintiff's family, in fear of serious bodily injury.

Discussion followed. It was pointed out that this proposal was not a recommendation of the Domestic Violence Commission. Several members were concerned that this proposal would take away the discretion of the Judge. Also of concern to members was that the hearing is ex parte

The bill was carried over. *Attached to these Minutes are copies of: SB 9, PCS for SB 9, Bill Analysis, and an "Ex Parte Domestic Violence Order of Protection" as Attachments 1, 2, 3, and 4 respectively.*

SB 30 (DV Victims/Add Protections) was before the committee. A proposed Committee Substitute was distributed to the members, and Sen. Rand moved that it be adopted for consideration. The motion carried.

Senator Boseman briefly explained Section 1 of the bill. She said the act would exempt the publication of an application for name change if the applicant provides any of the information listed in Section 1 of the bill. The proposed committee substitute adds subsection (b) to the bill, which provides that the court's entire record is not a matter of public record, and is only accessible upon court order, or with the written consent of the applicant.

Staff Attorney, Hal Pell, was recognized to explain the rest of the bill. He said Section 2 of the bill says that The Crime Victims' Rights Act provides that the law enforcement agencies, the district attorney's office, and the court have certain obligations to victims, including: notification of availability of services; explanation of the agency's role in prosecuting offenses; notification to the victim of proceedings; and insuring that victim identification information is forwarded to the district attorney. Section 3 of the bill says that the clerks of court are currently providing an information sheet to applicants when a domestic violence protective order is issues (attached). The Joint Legislative Committee on Domestic Violence recommended that the practice be made mandatory, and that the Attorney General's address confidentiality program be included. This section would make the current practice a statutory requirement, with the addition of the address confidentiality program as an additional service.

Senator Clodfelter moved for a favorable report for the Committee Substitute, unfavorable to the original bill. Discussion followed and the bill was carried over.

Attached to these Minutes are Copies of SB 30, the PCS for SB 30, the Bill Analysis for the PCS for SB 30 and "Temporary Handgun Permit Notice" as Attachments 5, 6, 7, and 8 respectively.

The meeting adjourned at 10:50 a.m.

Respectively Submitted

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 9

Short Title:	DV Order/No Firearm Purchase. (Public)
Sponsors:	Senators Boseman; Atwater, Cowell, Dannelly, Goodall, and Jenkins.
Referred to:	Judiciary 1 (Civil).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SUBJECT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER IS PROHIBITED FROM PURCHASING A FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) reads as rewritten:

"**§ 50B-3. Relief.**

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.
(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.
(3) Require a party to provide a spouse and his or her children suitable alternate housing.
(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.
(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.
(6) Order either party to make payments for the support of a minor child as required by law.
(7) Order either party to make payments for the support of a spouse as required by law.
(8) Provide for possession of personal property of the parties.
(9) Order a party to refrain from doing any or all of the following:
    a. Threatening, abusing, or following the other party.
    b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.
    c. Otherwise interfering with the other party.
(10) Award attorney's fees to either party.
(11) Prohibit a ~~party~~ plaintiff from purchasing a firearm for a time fixed in the order.
(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

The protective order shall prohibit the defendant from purchasing a firearm for a time fixed in the order."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 9
PROPOSED COMMITTEE SUBSTITUTE S9-CSRK-1 [v.2]

2/27/2007 10:27:07 AM

Short Title: DV Order/No Firearm Purchase. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A RESPONDENT OF A DOMESTIC VIOLENCE PROTECTIVE ORDER SHALL BE PROHIBITED FROM PURCHASING A FIREARM IF THE COURT FINDS THAT THE RESPONDENT MADE THREATS TO CAUSE BODILY INJURY OR DID ACTUALLY CAUSE BODILY INJURY, OR THAT THE RESPONDENT PLACED THE PLAINTIFF OR OTHERS IN FEAR OF SERIOUS BODILY INJURY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) reads as rewritten:

"**§ 50B-3. Relief.**

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.

(3) Require a party to provide a spouse and his or her children suitable alternate housing.

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.

(6) Order either party to make payments for the support of a minor child as required by law.

(7) Order either party to make payments for the support of a spouse as required by law.
(8) Provide for possession of personal property of the parties.
(9) Order a party to refrain from doing any or all of the following:
a. Threatening, abusing, or following the other party.
b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.
c. Otherwise interfering with the other party.
(10) Award attorney's fees to either party.
(11) Prohibit a party from purchasing a firearm for a time fixed in the order.
(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child. If the court finds that the respondent
(i) Attempted to cause, or intentionally caused, bodily injury to the plaintiff or a child living with or in the custody of the plaintiff, or
(ii) Placed the plaintiff, or a member of the plaintiff's family or household, in fear of serious bodily injury,
then the protective order shall prohibit the respondent from purchasing, or attempting to purchase, a firearm for a time fixed in the order.

SECTION 2. This act becomes effective July 1, 2007, and applies to orders issued on or after that date.

SENATE BILL 9:
DV Order/No Firearm Purchase

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	February 27, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	PCS to First Edition S9-CSRK		

SUMMARY: The proposed committee substitute would require that a respondent be prohibited from purchasing, or attempting to purchase, a firearm upon specified findings by the court issuing a domestic violence protective order. The act would be effective July 1, 2007, for orders issued on or after that date.

CURRENT LAW:

Under State law, a judge issuing a domestic violence protective order has the discretion to prohibit the respondent from purchasing a firearm. There is no violation for an attempted purchase where a "purchase" has been prohibited by the court.

Under federal law, a respondent is prohibited from purchasing a firearm if the order

(1) was issued after notice and the defendant was present at the hearing;

(2) restrains the defendant from harassing, stalking, threatening the plaintiff or a minor child, or restrains the defendant from acts that would place the plaintiff or minor child in reasonable fear of bodily injury;

(3) includes a finding that the respondent represents a credible threat to the physical safety of the plaintiff or minor child; and

(4) prohibits (by its terms) the use, attempted use, or threatened use of physical force against the plaintiff or minor child that would be expected to cause bodily injury.

BILL ANALYSIS: This act provides that a domestic violence protective order shall include a provision that prohibits the purchase, or attempted purchase, of a firearm if the court finds:

- That the respondent attempted to cause, or intentionally caused, bodily injury to the plaintiff, or to a minor living with the plaintiff, or
- That the respondent placed the plaintiff, or a member of the plaintiff's family, in fear of serious bodily injury.

A knowing violation of a domestic violence protective order is a Class A1 misdemeanor.

EFFECTIVE DATE: The act is effective July 1, 2007, and applies to orders issued on or after that date.

S0009e1-SMRK-CSRK

Case No. _____

Court General Court of Justice
District Court Division

County _____ NORTH CAROLINA

EX PARTE
DOMESTIC VIOLENCE
ORDER OF PROTECTION

G.S. 50B-2, -3, -3.1

PETITIONER/PLAINTIFF

First Middle Last

PETITIONER/PLAINTIFF IDENTIFIERS

Date Of Birth Of Petitioner

And/or on behalf of minor family member(s): *(List Name And DOB)*

Other Protected Persons/DOB:

VERSUS

RESPONDENT/DEFENDANT

First Middle Last

Relationship to Petitioner: ☐ spouse ☐ former spouse
☐ unmarried, of opposite sex, currently or formerly living together
☐ unmarried, have a child in common
☐ of opposite sex, currently or formerly in dating relationship
☐ current or former household member
☐ parent ☐ grandparent ☐ child ☐ grandchild

Respondent's/Defendant's Address

CAUTION:
☐ Weapon Involved

RESPONDENT/DEFENDANT IDENTIFIERS

Sex	Race	DOB	HT	WT
Eyes	**Hair**	**Social Security Number**		
Drivers License No.		**State**	**Expiration Date**	

Distinguishing Features

THE COURT HEREBY FINDS THAT:

This matter was heard by the undersigned ☐ district court judge. ☐ magistrate. The court has jurisdiction over the subject matter.

Additional findings of this order are set forth on Page 2.

THE COURT HEREBY ORDERS THAT:

☐ The above named Respondent/Defendant shall not commit any further acts of abuse or make any threats of abuse.

☐ The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, direct or indirect, by means such as telephone, personal contact, email, pager, gift-giving or telefacsimile machine. **[05]**

Additional terms of this order are as set forth on Pages 3 and 4.

The terms of this order shall be effective until _____ _____, _____

WARNINGS TO THE RESPONDENT/DEFENDANT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

This order will be enforced anywhere in North Carolina.

Only the Court can change this order. The plaintiff cannot give you permission to violate this order.

See additional warnings on Page 4.

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ADDITIONAL FINDINGS

1. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.

☐ 2. That on *(date of most recent conduct)* _____ , the defendant

☐ a. ☐ attempted to cause ☐ intentionally caused bodily injury to ☐ the plaintiff ☐ the child(ren) living with or in the custody of the plaintiff

☐ b. placed in fear of imminent serious bodily injury ☐ the plaintiff ☐ a member of the plaintiff's family ☐ a member of the plaintiff's household

☐ c. placed in fear of continued harassment that rises to such a level as to inflict substantial emotional distress ☐ the plaintiff ☐ a member of plaintiff's family ☐ a member of plaintiff's household

☐ d. committed an act defined in G.S. 14- ☐ 27.2 (1st deg. rape) ☐ 27.3 (2nd deg. rape) ☐ 27.4 (1st deg. sexual off.) ☐ 27.5 (2nd deg. sexual off.) ☐ 27.5A (sexual battery) ☐ 27.7 (sexual activity by substitute parent) against ☐ the plaintiff ☐ a child(ren) living with or in the custody of the plaintiff by *(describe defendant's conduct)*

☐ 3. The defendant is in possession of, owns or has access to firearms, ammunition, and gun permits described below. *(Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms)*

☐ 4. The defendant

☐ a. ☐ used ☐ threatened to use a deadly weapon against the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff

☐ b. has a pattern of prior conduct involving the ☐ use ☐ threatened use of violence with a firearm against persons

☐ c. made threats to seriously injure or kill the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff

☐ d. made threats to commit suicide

☐ e. inflicted serious injuries upon the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff in that *(state facts):*

☐ 5. The parties are the parents of the following child(ren) under the age of eighteen (18). The child(ren) are presently in the physical custody of the ☐ plaintiff. ☐ defendant. The plaintiff has submitted an "Affidavit As To The Status Of The Minor Child."

NOTE TO JUDGE: *A copy of AOC-CV-609 for each child must be attached to the order.*

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

☐ 6. The minor child(ren) is exposed to a substantial risk of physical or emotional injury or sexual abuse in that:

☐ 7. It is in the best interest of and necessary for the safety of the minor child(ren) ☐ that defendant stay away from the minor child(ren) ☐ that the defendant return the minor child(ren) to plaintiff ☐ and that the defendant not remove the minor child(ren) from plaintiff in that:

☐ 8. *(Check block only if plaintiff is entitled to physical care of child.)* It is in the best interest of the minor child(ren) that defendant have contact with the minor child(ren) in that:

☐ 9. The ☐ defendant ☐ plaintiff is presently in possession of the parties' residence at _____

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(Over)

Name Of Defendant	File No.

☐ 10. The ☐ defendant ☐ plaintiff is presently in possession of the parties' vehicle. *(describe vehicle)*

☐ 11. Other: *(specify)*

☐ 12. *(for magistrate only)* This matter was heard at a time when the district court was not in session and a district court judge was not available and would not be available for a period of four or more hours.

CONCLUSIONS

Based on these facts, the Court makes the following conclusions of law:

☐ 1. The defendant has committed acts of domestic violence against the plaintiff.

☐ 2. The defendant has committed acts of domestic violence against the minor child(ren) residing with or in the custody of the plaintiff.

☐ 3. It clearly appears that there is a danger of acts of domestic violence against the ☐ plaintiff. ☐ minor child(ren). [G.S. 50B-2(c)]

☐ 4. The minor child(ren) is exposed to a substantial risk of ☐ physical injury. ☐ emotional injury. ☐ sexual abuse. [G.S. 50B-2(c)]

☐ 5. The Court has jurisdiction under the Uniform Child Custody Jurisdiction And Enforcement Act.

☐ 6. It is in the best interest of and necessary for the safety of the minor child(ren) that the defendant ☐ stay away from the minor child(ren). ☐ (and) return the minor child(ren) to the physical care of the plaintiff. ☐ (and) not remove the minor from the physical care of the plaintiff.

☐ 7. The defendant's conduct requires that he/she surrender all firearms, ammunition and gun permits. [G.S. 50B-3.1]

☐ 8. The plaintiff has failed to prove grounds for ex parte relief.

ORDER

It is ORDERED that:

☐ 1. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**

☐ 2. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the minor child(ren) residing with or in the custody of the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**

☐ 3. the defendant shall not threaten a member of the plaintiff's family or household. **[02]**

☐ 4. the plaintiff is granted possession of, and the defendant is excluded from, the parties' residence described above and all personal property located in the residence except for the defendant's personal clothing, toiletries and tools of trade. **[03]**

☐ 5. any law enforcement agency with jurisdiction shall evict the defendant from the residence and shall assist the plaintiff in returning to the residence. **[08]**

☐ 6. the ☐ plaintiff **[08]** ☐ defendant **[08]** is entitled to get personal clothing, toiletries, and tools of trade from the parties' residence. A law enforcement officer shall assist the ☐ plaintiff ☐ defendant in returning to the residence to get these items.

☐ 7. the defendant shall stay away from the plaintiff's residence or any place where the plaintiff receives temporary shelter. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[04]**

☐ 8. the defendant shall stay away from the following places:
- ☐ (a) the place where the plaintiff works. **[04].**
- ☐ (b) any school(s) the child(ren) attend. **[04]**
- ☐ (c) the place where the child(ren) receives day care. **[04]**
- ☐ (d) the plaintiff's school. **[04]**
- ☐ (e) Other: (name other places) **[04]** _____

The sheriff must deliver a copy of this order to the principal or the principal's designee at the following school(s): *(name schools)*

☐ 9. the plaintiff is granted possession and use of the vehicle described in Block No. 10 of the Findings on Page 3. **[08]**

☐ 10. The plaintiff is awarded temporary custody of the minor child(ren) *(Check any of a, b, or c that apply.)*
- a. ☐ and the defendant is ordered to stay away from the minor child(ren).
- b. ☐ and the defendant is ordered to immediately return the minor child(ren) to the care of the plaintiff.
- c. ☐ and the defendant is ordered not to remove the minor child(ren) from the care of the plaintiff.

☐ 11. *(If No. 10 is checked and you are allowing visitation to defendant)* The defendant is allowed the following contact with the minor child(ren):

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☐ 12. the defendant is prohibited from ☐ possessing, owning or receiving **[07]** ☐ purchasing a firearm for the effective period of this Order **[07]** ☐ and the defendant's concealed handgun permit is suspended for the effective period of this Order. **[08]**

☐ The defendant is a law enforcement officer/member of the armed services and ☐ may ☐ may not possess or use a firearm for official use.

☐ 13. the defendant surrender to the Sheriff serving this order the firearms, ammunition, and gun permits described in Number 3 of Findings on Page 2 of this Order and any other firearms and ammunition in the defendant's care, custody, possession, ownership or control. **NOTE TO DEFENDANT:** ***You must surrender these items to the serving officer at the time this Order is served on you. If the weapons cannot be surrendered at that time, you must surrender them to the sheriff within 24 hours at the time and place specified by the sheriff. Failure to surrender the weapons and permits as ordered or possessing, owning, purchasing, or receiving a firearm, ammunition or permits to purchase or carry concealed firearms after being ordered not to possess firearms, ammunition or permits is a crime. See "Notice To Parties: To The Defendant" on page 4 of this Order for information regarding the penalty for these crimes and instructions on how to request return of surrendered weapons.***

☐ 14. the request for Ex Parte Order is denied.

☐ 15. Other: *(specify)* **[08]**

Date	*Signature*	☐ *District Court Judge* ☐ *Designated Magistrate*

NOTE TO PLAINTIFF: *If the judge signs this Order and gives it to you, take it to the Clerk's office immediately. If the magistrate signs this Order and gives it to you, follow the magistrate's directions.*

NOTE TO CLERK: *Give or mail a copy of this Order to the plaintiff and to the appropriate local law enforcement agency. Send copies to sheriff with Notice Of Hearing, Complaint and Summons for service on defendant. Send extra copies to the sheriff if required to deliver copy(ies) to the child(ren)'s school.*

NOTICE TO PARTIES

TO THE DEFENDANT:

1. **If this Order prohibits you from possessing, owning, receiving or purchasing a firearm and you violate or attempt to violate that provision, you may be charged with a Class H felony pursuant to North Carolina G.S. 14-269.8 and may be imprisoned for up to 30 months.**
2. **If you have been ordered to surrender firearms, ammunition, and gun permits and you fail to surrender them as required by this Order, or if you failed to disclose to the Court all information requested about possession of these items or provided false information about any of these items you may be charged with a Class H felony and may be imprisoned for up to 30 months.** If you surrendered your firearms, ammunition, and permits, you may file a motion for the return of weapons with the clerk of court in the county in which this Order was entered when the protective order is no longer in effect, except if at the time this Order expires criminal charges, in either state or federal court, are pending against you alleged to have been committed against the person who is protected by this order, you may not file for return of the firearms until final disposition of the criminal charges. The form motion, "Motion For Return Of Weapons Surrendered Under Domestic Violence Order" AOC-CV-319, is available from the clerk of court's office. The motion must be filed **not later than 90 days after the expiration of the Order that requires you to surrender the firearms or if you have pending criminal charges alleged to have been committed against the person who is protected by the domestic violence protection order, the motion must be filed not later than 90 days after final disposition of the criminal charges.** At the time you file the motion, the clerk will schedule a hearing before the district court for a judge to determine whether to return the weapons to you. The sheriff cannot return your weapons unless the Court orders the sheriff to do so. You must pay the sheriff's storage fee before the sheriff returns your weapons. If you fail to file a motion for return of the weapons within 90 days after the expiration of this Order, or the final disposition of criminal charges pending at the time this Order expired, or if you fail to pay the storage fees **within 30 days after the Court enters an order to return your weapons**, the sheriff may seek an order from the Court to dispose of your weapons.

TO THE PLAINTIFF:

1. You should keep a copy of this order on you at all times and should make copies to give to your friends and family. If you move to another county or state, you may wish to give a copy to the law enforcement agency where you move, but you are not required to do so.
2. The court or judge is the only one that can make changes to this order. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
3. If the defendant violates any provision of this order, you may call a law enforcement officer or go to a magistrate to charge the defendant with the crime of violating a protective order. You also may go to the Clerk of Court's office in the county where the protective order was issued and ask to fill out form AOC-CV-307, Motion For Order To Show Cause Domestic Violence Protective Order, to have an order issued for the defendant to appear before a district court judge to be held in contempt for violating the order.

CERTIFICATION

I certify this order is a true copy.

Date	*Signature Of Clerk*	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk of Superior Court*

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Name Of Defendant	File No.

RETURN OF SERVICE

NOTE: *To be used when Magistrate issues ex parte protective order and order will be served on defendant separate from the complaint and civil summons. If complaint and summons are served with order, return on summons covers order.*

I certify that this Ex Parte Domestic Violence Order of Protection was received and served as follows:

Date Served	Time Served	Name Of Defendant
	☐ AM ☐ PM	

☐ By delivering to the defendant named above a copy of the order.

☐ By leaving a copy of the order at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left

☐ Other manner of service on the defendant *(specify)*

☐ Defendant WAS NOT served for the following reason.

Date Received	Signature Of Deputy Sheriff Making Return
Date Of Return	Name Of Sheriff (Type Or Print)
	County Of Sheriff

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 30*

Short Title: DV Victims/Add Protections. (Public)

Sponsors: Senators Boseman; Atwater, Cowell, Goodall, and Snow.

Referred to: Judiciary 1 (Civil).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS TO PROVIDE GREATER PROTECTION FOR DOMESTIC VIOLENCE VICTIMS AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 101-2 reads as rewritten:

"**§ 101-2. Procedure for changing name; petition; notice.**

(a) A person who wishes, for good cause shown, to change his or her name must file an application before the clerk of the superior court of the county in which the person lives, after giving 10 days' notice of the application by publication at the courthouse ~~door.~~door; provided that publication is not required if the applicant provides evidence that the applicant is a victim of domestic violence, sexual offense, or stalking. This evidence may include any of the following:

(1) Law enforcement, court, or other federal or state agency records or files.

(2) Documentation from a domestic violence program if the applicant is alleged to be a victim of domestic violence.

(3) Documentation from a religious, medical, or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

(b) An application to change the name of a minor child may be filed by the child's parent or parents, guardian, or guardian ad litem, and this application may be joined in the application for a change of name filed by the parent or parents. Nothing in this section shall be construed to permit one parent to make an application on behalf of a minor child without the consent of the other parent if both parents are living; except that a minor who has reached the age of 16 years, upon proper application to the clerk, may change his or her name with the consent of the parent who has custody of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the

minor. A change of parentage or the addition of information relating to parentage on the birth certificate of any person is governed by G.S. 130A-118.

The consent of a parent who has abandoned a minor child is not required if a copy of an order of a court of competent jurisdiction adjudicating that parent's abandonment of the minor if filed with the clerk. If a court of competent jurisdiction has not declared the minor to be an abandoned child, the clerk, on 10 days' written notice by registered or certified mail, directed to the last known address of the parent alleged to have abandoned the child, may determine whether the parent has abandoned the child. If the parent denies that the parent abandoned the child, this issue of fact shall be transferred and determined as provided in G.S. 1-301.2. If abandonment is determined, the consent of the parent is not required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

SECTION 2. G.S. 15A-830(a)(7) reads as rewritten:

"(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; 14-43.6; 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.

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.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 3. G.S. 50B-3(c1) reads as rewritten:

"(c1) When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that includes:

(1) Domestic violence agencies and services.

(2) Sexual assault agencies and services.

(3) Victims' compensation services.

(4) Legal aid services.

(5) Address confidentiality services.

The sheet shall also ~~explains~~ explain the plaintiff's right to apply for a permit under G.S. 14-415.15."

SECTION 4. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 30*
PROPOSED COMMITTEE SUBSTITUTE S30-CSRK-2 [v.2]

2/26/2007 4:59:50 PM

Short Title: DV Victims/Add Protections. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS TO PROVIDE GREATER PROTECTION FOR DOMESTIC VIOLENCE VICTIMS AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 101-2 reads as rewritten:

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(1) Law enforcement, court, or other federal or state agency records or files.

(2) Documentation from a domestic violence program if the applicant is alleged to be a victim of domestic violence.

(3) Documentation from a religious, medical, or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

(b) The application and the court's entire record of the proceedings is not a matter of public record where the applicant has provided evidence under subsection (a)(1), (a)(2), or (a)(3) of this section. Records qualifying under this subsection shall be maintained separately from other records, shall be withheld from public inspection, and may be examined only by order of the court, or with the written consent of the applicant.

(c) An application to change the name of a minor child may be filed by the child's parent or parents, guardian, or guardian ad litem, and this application may be

joined in the application for a change of name filed by the parent or parents. Nothing in this section shall be construed to permit one parent to make an application on behalf of a minor child without the consent of the other parent if both parents are living; except that a minor who has reached the age of 16 years, upon proper application to the clerk, may change his or her name with the consent of the parent who has custody of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. A change of parentage or the addition of information relating to parentage on the birth certificate of any person is governed by G.S. 130A-118.

The consent of a parent who has abandoned a minor child is not required if a copy of an order of a court of competent jurisdiction adjudicating that parent's abandonment of the minor if filed with the clerk. If a court of competent jurisdiction has not declared the minor to be an abandoned child, the clerk, on 10 days' written notice by registered or certified mail, directed to the last known address of the parent alleged to have abandoned the child, may determine whether the parent has abandoned the child. If the parent denies that the parent abandoned the child, this issue of fact shall be transferred and determined as provided in G.S. 1-301.2. If abandonment is determined, the consent of the parent is not required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

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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.

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.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 3. G.S. 50B-3(c1) reads as rewritten:

"(c1) When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that includes:

(1) Domestic violence agencies and services.
(2) Sexual assault agencies and services.
(3) Victims' compensation services.
(4) Legal aid services.
(5) Address confidentiality services.

The sheet shall also ~~explains~~ explain the plaintiff's right to apply for a permit under G.S. 14-415.15."

SECTION 4. This act becomes effective October 1, 2007.

SENATE BILL 30:
DV Victims/Add Protections

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 1, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell
Version:	PCS to First Edition S30-CSRK		Committee Co-Counsel

SUMMARY: This act would keep name change records of domestic violence victims from the public records; include as victims under the Crime Victims' Rights Act any person who has had a domestic violence protective order, if the order was violated by the respondent; and makes mandatory a current practice of the clerks of court to provide domestic violence victims with information. The act becomes effective October 1, 2007.

[As introduced, this bill was identical to H45, as introduced by Reps. McLawhorn, Ross, Farmer-Butterfield, Parmon, which is currently in House Judiciary I.]

BILL ANALYSIS:

Section 1: The act would exempt the publication of an application for a name change if the applicant provides any of the information listed in Section 1 of the bill. [Same as House Bill] During discussion of the bill in the Joint Legislative Committee on Domestic Violence, the committee noted that while it was recommending the bill, it did need some additional language to insure that the actual court records were not available to the public.

The proposed committee substitute adds subsection (b) to the bill. This subsection provides that the court's entire record is not a matter of public record, and is only accessible upon court order, or with the written consent of the applicant.

Section 2: The Crime Victims' Rights Act provides that law enforcement agencies, the district attorney's office, and the court have certain obligations to victims, including: notification of availability of services; explanation of the agency's role in prosecuting offenses; notification to the victim of proceedings; and insuring that victim identification information is forwarded to the district attorney.

This section would include as a victim any person who had a domestic violence protective order, and there is probable cause to believe that a person has violated the order.

Section 3: The clerks of court are currently providing an information sheet to applicants when a domestic violence protective order is issued. (attached) The Joint Legislative Committee on Domestic Violence recommended that the practice be made mandatory, and that the Attorney General's address confidentiality program be included. The section would make the current practice a statutory requirement, with the addition of the address confidentiality program as an additional service.

EFFECTIVE DATE: The act is effective October 1, 2007.

S0030e1-SMRK-CSRK

TEMPORARY HANDGUN PERMIT
NOTICE

House Bill 1311 (S.L. 2005-343) requires the Clerk of Superior Court to provide you with the following information regarding temporary handgun permits when a protective order under Chapter 50B of the North Carolina General Statutes is filed in the clerk's office.

G.S. 14-415.15 (b) states in part,

[T]he sheriff may issue a temporary permit for a period not to exceed 90 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without hearing. (Emphasis added.)

REQUIREMENTS OF APPLICANT:

The sheriff is authorized to issue a temporary permit when the sheriff believes that the applicant is in an emergency situation and the applicant presents all of the following:

1) An application, completed under oath, on a form provided by the sheriff.
2) A nonrefundable permit fee.
3) A full set of fingerprints of the applicant administered by the sheriff.

** This Notice has been approved by the Administrative Office of the Courts and is a temporary form to be used by each Clerk of Superior Court effective October 1, 2005.

-over-

Information on Other Available Resources

DOMESTIC VIOLENCE SERVICES

Domestic violence services such as shelter, court advocacy, counseling, support group, and other crisis intervention services are available in every county in NC.

- **If you have access to a telephone**, you can get information on how to contact the domestic violence program in your area by calling:
  - The North Carolina Council for Women/Domestic Violence Commission at (919) 733-2455 during normal business hours.
  - The National Domestic Violence Hotline **24 hours a day** for immediate assistance at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).
- **If you have access to a computer**, you can get contact information about your local domestic violence program by visiting either of the following websites:
  - www.nccadv.org (North Carolina Coalition Against Domestic Violence)
  - www.doa.state.nc.us/cfw/dv.htm (North Carolina Council for Women/Domestic Violence Commission)

SEXUAL ASSAULT SERVICES

Throughout most of North Carolina, there are rape crisis centers where you can talk to someone about sexual assault services such as counseling, free legal representation, or other crisis intervention services.

- **If you have access to a telephone**, you can get information on how to contact the sexual assault service provider in your area by calling:
  - The North Carolina Council for Women/Domestic Violence Commission at (919) 733-2455 during normal business hours.
  - You can also contact the National Sexual Assault Hotline **24 hours a day** for immediate assistance at 1-800-656-HOPE or 1-800-656-4673.
- **If you have access to a computer**, you can get contact information about the sexual assault program in your area by visiting either of the following websites:
- www.nccasa.org (North Carolina Coalition Against Sexual Assault)
- http://www.doa.state.nc.us/cfw/sa.htm (North Carolina Council for Women/Domestic Violence Commission)

Victims' Compensation Services

If you would like to learn more about your rights to victim compensation, contact:

- **NC Victims' Compensation Services -** 1-800-826-6200 or (919) 733-7974

Legal Aid Services

Legal Aid of North Carolina (LANC) provides basic civil legal services to eligible clients **in all 100 counties** in North Carolina through its field offices. For information on the legal aid office in your area, visit their website at http://www.legalaidnc.org/programs.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 6, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christine Wunsche	10G-Daily Bulletin
Colleen Kochanek	NCCADV
Jeff Mixon	Civitas
Jo McCants	AOC
OCTAVIA RAINEY	NC FAIR SHARE
Jessica Bennett	
Katherine Davies	Electric Cities of NC
Mia Bailey	Electric Cities of NC, Inc.
Anita Watkins	NCLM
Henry Hunt III	N.C.B.A.
Jay Rhew	NCAEC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

March 6, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Preston Howard	MCIC

Senate Judiciary I Committee
March 13, 2007
Minutes

The Senate Committee on Judiciary I met on Tuesday, March 13, 2007 at 10:00 a.m. in Room 1027. A quorum was present.

Senator Martin Nesbitt called the meeting to order and told the members that the bills on the agenda today have to do with election laws, which are important to all members. He said the bills were up for discussion and not for a vote.

Senator Andrew Brock was recognized to discuss **SB 168** (*Presidential Primary in February*). He told the committee that New Hampshire, which has the first Presidential Primary, leads the nation in voter turnout. Also, an early Presidential Primary in North Carolina would encourage Presidential candidates to come to our state and would put issues the state is experiencing, such as job losses, on the national agenda. He said that it would be more cost-efficient to run a campaign in North Carolina because media rates are lower. Another advantage to moving the primary would be its economic impact. Senator Brock said that the economic impact of the early primary in New Hampshire in 2000 was $264 million.

Committee Counsel William Gilkeson was recognized for comments on the bill. He explained that **SB 168** would move the presidential primary from the Tuesday after the first Monday in May to the first Tuesday in February. He said that in 2004, presidential primaries were held in 27 states before North Carolina's primary was scheduled.

Mr. Gilkeson explained that the current law provides two alternative methods for a presidential candidate to get on the ballot in the North Carolina Presidential Primary:

1. The first is for the candidate to become eligible to receive payments from the Presidential Primary Matching Payments Account. That public financing program, funded by check-offs on the Federal Income Tax Return, makes candidates eligible for matching payments if they agree to limit their expenditures, and if they have raised $5,000 from residents in each of 20 states (a total of $100,000) with no individual contributing more than $250. All candidates

who become eligible for those matching payments must be approved for the NC primary ballot by the State Board of Elections at a meeting to be held the first Tuesday in March. For next year, that is March 4, 2008.

2. The second is for the candidate to collect signatures from 10,000 registered voters of the same party in North Carolina. Those signatures must be filed with the State Board of Elections by 5 pm on the day before its meeting on the first Tuesday in March.

He said this bill would move the meeting of the Board of Elections to decide who is going to be on the ballot from March 4th to December 5th and the candidates would either have qualified for public funding at that time, or they would have had to collect the signatures from 10,000 registered voters by sometime in November.

Some people see these ways to get on the ballot in NC as a cumbersome process, and Mr. Gilkeson felt that it would be especially cumbersome if the Presidential Primary were held much earlier. It might be difficult for the Board of Elections to verify the signatures while it is, at the same time, wrapping up municipal elections.

Also, increasingly it seems that many candidates don't opt for public funding because of spending limits and they must get the 10,000 signatures.

Mr. Gilkeson said in other states, there are different ways to get on the ballot.

At least twice, North Carolina has had earlier primaries and has separated its Presidential Primaries from state and local offices. In 1988 North Carolina joined a regional primary of mostly southern states (Super Tuesday), which was mainly an initiative of the Democratic Party. The success of that initiative was questionable.

Another issue is the cost of separating the primaries, and it is estimated that this would cost counties at least $5.5 million. In some instances in the past, the General Assembly has reimbursed the counties, once for a state-wide school bond referendum and for some separate primaries.

Another issue is that county budgets are already in place and if this bill passes the counties might find it difficult to fund an earlier Presidential Primary.

Another issue is what the rest of the country is doing. For 2008 many States are still in the process of selecting their Presidential Primary dates. There is a widely noted movement for "frontloading" the nomination process as more states move their primaries to January. Many states are doing this. (*See Page 2 of the Bill Analysis*).

Mr. Gilkeson said it appears that most of the states have primaries the way North Carolina does, that is, the cost is carried by the counties or the state. In some states, such as in South Carolina, the parties pay for primaries.

Discussion followed regarding funding for this initiative and there was speculation that a party may pay for financing the earlier primary. Mr. Gilkeson was asked to do an analysis of how caucuses work around the country.

Senator Brock added that a caucus would have less of an economic impact that a primary would.
Senator Nesbitt had more concerns about the general election.

Senator Rand felt that the state should look at having an early caucus, which would be less costly. He also had concerns about voter turnout in a separate primary.

Senator Nesbitt agreed that a caucus would be a better exercise.

Senator Tillman wanted more information on the economic impact of those states that have earlier caucuses.

The meeting adjourned at 10:50 a.m.

Copies of SB 168 and the Bill Analysis for SB 168 are attached to these Minutes as Attachments 1 and 2 respectively.

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette Whaley Lee

Janette Whaley Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 168

Short Title:	Presidential Primary in February.	(Public)
Sponsors:	Senators Brock; Blake, Brown, Brunstetter, Forrester, Goodall, Hunt, Pittenger, and Tillman.	
Referred to:	Judiciary 1 (Civil).	

February 14, 2007

A BILL TO BE ENTITLED

AN ACT TO MOVE THE PRESIDENTIAL PREFERENCE PRIMARY TO FEBRUARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-213.2 reads as rewritten:

"**§ 163-213.2. Primary to be held; date; qualifications and registration of voters.**

On the ~~Tuesday after the first Monday in May, 1992,~~ first Tuesday in February, 2008, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

SECTION 2. G.S. 163-213.4 reads as rewritten:

"**§ 163-213.4. Nomination by State Board of Elections.**

The State Board of Elections shall convene in Raleigh on the first Tuesday in ~~March~~ December preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have become eligible to receive payments from the Presidential Primary Matching Payment Account, as provided in section 9033 of the U.S. Internal Revenue Code of 1954, as amended.

Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 168:
Presidential Primary in February

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	February 26, 2007
Introduced by:	Sen. Brock	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Counsel

SUMMARY: The First Edition of Senate Bill 168 would move North Carolina's presidential primary from the Tuesday after the first Monday in May (in 2008, May 6) to the first Tuesday in February (in 2008, February 5).

CURRENT LAW: Currently, North Carolina holds its presidential primaries at the same time as party primaries for other federal, State, and county offices, on the Tuesday after the first Monday in May. In 2008, that day will fall on May 6.

Current law provides two alternative methods for a presidential candidate to get on the ballot in the N.C. Presidential Primary:

1. The first is for the candidate to become eligible to receive payments from the Presidential Primary Matching Payments Account. That public financing program, funded by check-offs on the Federal Income Tax Return, makes candidates eligible for matching payments if they agree to limit their expenditures, and if they have raised $5,000 from residents of each of 20 states (a total of $100,000) with no individual contributing more than $250. All candidates who become eligible for those matching payments must be approved for the NC primary ballot by the State Board of Elections at a meeting to be held on the first Tuesday in March. That is March 4, 2008.
2. The second is for the candidate to collect on petitions signatures from 10,000 registered voters of the same party in North Carolina. Those signatures must be filed with the State Board of Elections by 5 pm on the day before its meeting on the first Tuesday in March.

The parties are required to allocate the delegates to their national presidential nominating conventions proportionally according to the votes of the primary. However, if that law puts the State's party in conflict with the national rules of its party, the party's State executive committee may resolve the conflict by adopting the national rules, but only to the extent of the conflict. *GS 163-213.8.*

BILL ANALYSIS: SB 168 moves the presidential primary from the Tuesday after the first Monday in May to the first Tuesday in February. In 2008, that means from May 6 to February 5. ***Section 1 of the bill.*** It leaves the primaries for non-presidential offices in May, so NC would have two separate primaries, the presidential one in February and the non-presidential one in May.

The bill also moves the meeting at which the State Board of Elections approves candidates from the first Tuesday in March back to the first Tuesday in December. That is December 5, 2007. ***Section 2 of the bill.*** To get on the NC primary ballot, presidential candidates would have to either become eligible for federal primary matching payments by December 5, or file their 10,000 signatures by December 4.

EFFECTIVE DATE: The bill would be effective upon becoming law.

BACKGROUND: In 2004, presidential primaries were held in 27 states before North Carolina's was scheduled by statute to be held May 4. The NC primary was not held, because redistricting litigation resulted in the general primary date being postponed to July 20. The Democratic National Convention was scheduled less than a week later. With the agreement of the leaders of the Democratic, Republican, and Libertarian parties, the State Board of Elections cancelled the presidential primary. Delegates to the party national conventions were chosen according to party rules.

For 2008, many States are still in the process of selecting their presidential primary dates. There is a widely noted movement for "frontloading" the nomination process as more states move their primaries early in order to be important players in the process. Already, 4 states have set their 2008 caucuses or primaries in January: Iowa caucus Jan. 14; Nevada caucus Jan. 19; New Hampshire primary Jan. 22; South Carolina primary Jan. 29. Florida has legislation pending that would set its primary Jan. 29. As many as 10 states, including California, are reported to be looking at setting their primaries on Feb. 5.

The national party conventions are set near Labor Day: the Democratic in Denver on August 25 and the Republican in St. Paul on September 1.

At least twice, North Carolina has set its presidential primary earlier than the State and local primary. In 1976, the primary was set March 23. That was the year the NC Republican primary caught national notice when Ronald Reagan surprisingly defeated President Gerald Ford. In 1988, North Carolina joined a group of mostly Southern states in participating in a "Super Tuesday" primary March 8. The reported strategic idea was to give the region a stronger voice particularly in the Democratic nominating process. The Southern Democratic primaries split between Sen. Al Gore and the Rev. Jesse Jackson, with North Carolina giving a relatively narrow victory to Gore.

The cost of a separate election is mostly a cost to counties. That total statewide cost to counties has been informally estimated to be at least $5.5 million. The last two times a special statewide vote has been set on a day separate from other elections, the General Assembly has reimbursed the counties for the cost of the election. Those votes were the 1988 presidential primary and the 1993 statewide school bond referendum.

It has been noted that county boards of elections normally make their budget requests to the county commissioners in February or March for the next fiscal year. So they would be making their 2007-09 budget requests right now. Budgetary planning for a February 2008 primary could be difficult.

It has also been noted that North Carolina's mechanism for candidate ballot access may result in difficulties. In recent years there has been a trend for top presidential candidates to bypass federal matching funds for the primaries. That means the candidates must collect signatures on petitions, and county boards of elections must verify them. The signatures must be presented to each county board of elections for verification 10 days before the Dec. 4 State deadline. The preliminary deadline to the counties is Nov. 23. So counties may have to check petition signatures for presidential candidates at a time when they may still be wrapping up the municipal elections. It has been suggested that another ballot access mechanism be considered. If the rationale for using federal matching payments eligibility as a criterion was to identify the candidates who have a threshold amount of support, then the requirement may no longer be the most accurate indicator.

S0168e1-SMRR

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 13, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Mixon	Civitas Institute.
Michael Houser	NCAE
Octavia Rainey	N.C. Fair Share
Melissa Price	citizen
Chris Heagarty	NC Ctr. for Voter Educ.
VANCE MCLEE	OSBM
RYAN BOLYARD	NTO
Jess MacDonald	Sen. Bosemen
Kim Bauer	Wake County Board of Elections
Susan Myrick	Wake BOE
Damon Circosta	NC Ctr for Voter Ed,

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 13, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Stromberg	Luebke
Jennifer Willis	Wake County Govt
Jason Cournoyer	NC Policy Watch
Gary Barnett	SBE
[illegible]	"
Bob Rauf	"
Patrick Buffkin	Nelson Mullins
Melanie Rash White	NC Center for Public Policy Research
Tom Coley	NC CWA
Cam Cover	BPMHL
Zeb Alley	Nelson Mullins

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 13, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alastair Macaulay	NCHBA
Lisa Martin	"
Paul Wilms	"
Bob Hall	Democracy NC
BRUCE THOMASON	PARKER POE
Chris Heagy	Civitas
DANIEL GRAFF-RHODES	CONSULTANT

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 13, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julia Leggett	ADA - CIL

Senate Judiciary I Committee
March 15, 2007
Minutes

The Senate Committee on Judiciary I met on Thursday, March 15, 2007 at 10:00 a.m. in Room 1027 of the Legislative Building. A quorum was present.

Senator Martin Nesbitt called the meeting to order and made opening remarks. He then recognized Senator Larry Shaw to explain **SB 195** (*Registration and Voting at One-Stop Sites).*

Senator Shaw said he realized the complexity of the issue of same day registration and voting. He told Chairman Nesbitt that there were visitors in attendance that he would like to have at the podium. Gary Bartlett, Executive Director of the NC Board of Elections, Bob Hall with Democracy South, and Olivia Raney, with the NAACP were recognized.

Committee Counsel William Gilkeson was recognized to explain the bill. He said that current law is that voters may not vote in an election unless they have registered 25 days before election day. Exceptions are narrow:

- For persons who have become qualified after the deadline by naturalization or restoration to citizenship after serving a felony sentence. They may register on election day only.
- For people who may register and vote by absentee ballot because of their overseas or military status.

One-stop absentee voting, popularly called "early voting," begins on the third Thursday before an election and ends the Saturday before the election. One-stop begins six days after the standard close of registration.

Mr. Gilkeson explained that **SB 195** would allow anyone who is qualified to vote to register and vote at a one-stop site. In order to vote, the person would have to do the following:

- Provide "proof of residence," which could be one of several documents that he the person's name and current address: a NC drivers license, a photo I.D. from a government agency, a utility bill, bank statement, paycheck, government check, or other government document. (That is roughly the list of I.D.s that satisfy the federal I.D. requirement for certain first-time voters, except that in this a a current address is required for any of the I.D.s.)

- Complete the standard voter registration form there at the one-stop site in the presence of the official.
- Sign a statement under penalty of perjury that they are a U.S. citizen and reside at the address given.

Mr. Gilkeson said there might be a clean-up amendment to this bill to remove the separate requirement to sign a statement under penalty of perjury that one is a U.S. citizen, because the voter registration form already contains that requirement and the requirement that one resides in that precinct.

Once registered at the one-stop site, the person may vote right then. They will vote a retrievable ballot, as do other one-stop voters. If the newly registered person did not want to vote right then, they could come back later and vote, but only at a one-stop site-not by mail absentee and not at the polls on election day.

Within 2 business days after the person has registered at the one-stop site, the board of elections must proceed to verify the person's identity and address. The person's one-stop ballot must be counted unless the board determines that the applicant is not qualified to vote it.

A person already registered may update information on their records at the one-stop site, except that they cannot change party registration before a primary.

Mr. Gilkeson explained that Section 2 and 3 of the bill are cleanup sections. Section 4 requires the State Board of Elections to monitor the implementation of the act and report if and when it is feasible to allow people to register and vote on election day. The first 3 sections would become effective July 1, 2007, the rest immediately. Seven states allow voter-registration on election day.

When Mr. Gilkeson had completed his analysis, Senator Nesbitt told the committee that when the early voting initiative was heard in the Legislature, members found that to be quite contentious and that the thing that saved the day is that those votes are retrieval, unlike election day votes.

Discussion followed, with Senator Tillman being concerned about the 2-day turnaround to verify addresses and the IDs and the ability of counties to do that.

Mr. Gary Bartlett, Executive Director of the State Board of Elections, told the committee that every one-stop sites and county one-stop sites either "Real Time or Batched Up," where the information is entered. Once the close of business, the process of checking for duplications and matches for drivers' licenses and social security numbers is automatic, so that would not be a problem. It can be done within 24 hours after receiving the information.

Mr. Bartlett explained that the process of verifying an address would still go out, and if that piece of mail came back the board would continue to work that application. There is a process wherein if you receive a verification mailing back, the board would send another. If the voter is caught in that process, there is a provision in the election laws to deny that application. The person who is denied has the right to appeal for a hearing within 5 days of receipt of that letter.

Mr. Bartlett said sometimes, land lines go down, but once the information is keyed into the Board's system, process is automatic. He told the committee that the Board had worked on the infrastructure for this process at the request of a legislator who wanted to introduce this bill a few years ago.

Mr. Bartlett told the committee the percentages of the various types of verification. Driver's license take care of 98 percent of verifications, with10-15 percent of those have issues that the Board must follow up on. Regarding Social Securities, from 20-30 percent have issues.

Mr. Bartlett told the committee that in every election there are always 8-12 people who vote twice, some on purpose, others due to dementia. At this point in time and in the past this has not been a big problem.

Senator Phil Berger had concerns that this legislation would invite litigation.
He had concerns about allowing someone under this bill could show up at a one-stop voting agency and use a utility bill as an ID to vote.

Mr. Bartlett told the committee that, since inception of early voting, there have been only 180 of these.

Members were interested in how many voters used early voting. Mr. Bartlett said that in 2004, 1.1 million voters voted in the early voting process and that it seems to be neutral as to whom it helps.

During his tenure as Executive Director of the State Board of Elections, Mr. Bartlett said he has seen many changes. The first was implementing the "Do It Yourself Form." Some officials thought this would wreck the process, but it worked well. Early voting is another initiative that has had a positive impact on voter turnout.

Lynice Williams, Director of North Carolina Fair-Share, was recognized to speak. She thanked Senator Nesbitt for bringing **SB 195** before the committee and thanked the bill sponsor, Senator Larry Shaw.

She said that one of her organization's goals was to eliminate obstacles and to make it easier for people to vote, especially in rural counties. She believed SB 195 would accomplish this and she asked the committee to support the bill.

The meeting adjourned at 10:50 a.m.

Attached to these Minutes are copies of SB 195 (Attachment 1), Bill Analysis for SB 195, and handout (Attachment 2), "Election-Day Registration: A Case Study" (Attachment 3).

Respectively submitted,

Martin L. Nesbitt
Chairman

Janette Whaley Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 195*

Short Title:	Registration and Voting at One-Stop Sites.	(Public)
Sponsors:	Senators Shaw; Atwater, Berger of Franklin, Clodfelter, Cowell, Dorsett, and Foriest.	
Referred to:	Judiciary 1 (Civil).	

February 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IN-PERSON REGISTRATION AND VOTING AT ONE-STOP ABSENTEE VOTING SITES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.6A. In-person registration and voting at one-stop sites.**

(a) Who May Register in Person. – In accordance with the provisions in this section, an individual who is qualified to register to vote may register in person and then vote at a one-stop voting site in the person's county of residence during the period for one-stop voting provided under G.S. 163-227.2. For purposes of this section, a one-stop voting site includes the county board of elections office, if that office is used for one-stop voting.

(b) Documentation and Sworn Statement Required. – To register and vote under this section, the person shall provide proof of residence, complete a registration form as prescribed in G.S. 163-82.4, and sign a statement under penalty of perjury that the person is a citizen of the United States and resides at the address given. The presentation of any of the following valid documents that show the person's name and current address is required as proof of residence: a North Carolina drivers license, photo identification from a government agency, utility bill, bank statement, paycheck, government check, or other government document. The State Board of Elections may designate additional documents or methods that suffice and shall prescribe procedures for establishing proof of residence.

(c) Voting With Retrievable Ballot. – A person who registers under this section shall vote a retrievable absentee ballot as provided in G.S. 163-227.2 immediately after registering. If a person declines to vote immediately, the registration shall be processed, and the person may later vote at a one-stop voting site under this section in the same election.

(d) Verification of Registration; Counting of Ballot. – Within two business days of the person's registration under this section, the county board of elections in conjunction with the State Board of Elections shall verify the North Carolina drivers license or Social Security number in accordance with G.S. 163-82.12, update the statewide registration database and search for possible duplicate registrations, and proceed under G.S. 163-82.7 to verify the person's address. The person's vote shall be counted unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter.

(e) Change of Registration at One-Stop Voting Site. – A person who is already registered to vote in the county may update the information in the registration record in accordance with procedures prescribed by the State Board of Elections, but an individual's party affiliation may not be changed during the one-stop voting period before any first or second partisan primary in which the individual is eligible to vote."

SECTION 2. G.S. 163-82.6(c), (d), and (e) read as rewritten:

"§ 163-82.6. Acceptance of voter registration application forms.

(c) Registration Deadlines for an Election. – In order to be valid for an election, except as provided in G.S. 163-82.6A, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election, except as provided in subsection (d) of this section.

(d) Instances When Person May Register and Vote ~~on Election Day.~~ After the Standard Registration Deadline. – If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register and vote at a one-stop site as provided in G.S. 163-82.6A, or may apply to register on election day by submitting an application form described in G.S. 163-82.3 (a) or (b) to:

(1) A member of the county board of elections;

(2) The county director of elections; or

(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may

require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election day applications to register. No person shall be permitted to register on the day of a second primary unless ~~he shall have become~~ the person becomes qualified to register and vote between the date of the first primary and the date of the succeeding second primary and was not qualified to register and vote in the first primary.

(e) For purposes of subsection (d) of this section, persons who "become qualified to register and vote" during a time ~~period:~~period

~~(1)~~ ~~Include~~ include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony~~; but~~

~~(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period.~~"

SECTION 3. G.S. 163-227.2(a) reads as rewritten:

"(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request an application for absentee ballots, complete the application, and vote under the provisions of this ~~section.~~section and of G.S. 163-82.6A, as applicable."

SECTION 4. The State Board of Elections shall monitor the implementation of this act and determine the feasibility and timetable for expanding same-day registration and voting to all voting places on Election Day. The State Board shall report its findings no later than March 1, 2008, to the Joint Legislative Commission on Governmental Operations of the General Assembly.

SECTION 5. Sections 1, 2, and 3 of this act become effective July 1, 2007, and shall apply to all primaries and elections held on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 195:
Registration and Voting at One-Stop Sites

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	February 27, 2007
Introduced by:	Sen. Shaw	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Counsel

SUMMARY: The First Edition of Senate Bill 195 would allow people both to register and to vote at one-stop (early voting) sites.

[As introduced, this bill was identical to H91, as introduced by Reps. Ross, Holliman, Parmon, Tolson, which is currently in House Election Law and Campaign Finance Reform.]

CURRENT LAW: The basic current law is that voters may not vote in an election unless they have registered 25 days before election day. Exceptions are narrow:

- For persons who have become qualified after the deadline by naturalization or restoration to citizenship after serving a felony sentence. They may register on election day only.
- For people who may register and vote by absentee ballot because of their overseas or military status.

One-stop absentee voting, popularly called "early voting," begins on the third Thursday before an election and ends the Saturday before the election. One-stop begins six days after the standard close of registration.

BILL ANALYSIS: SB 195 would allow anyone who is qualified to vote to register and vote at a one-stop site. In order to vote, the person would have to do the following:

- Provide "proof of residence," which could be one of several documents that had the person's name and current address: a NC drivers license, a photo I.D. from a government agency, a utility bill, bank statement, paycheck, government check, or other government document. (That is roughly the list of I.D.s that satisfy the federal I.D. requirement for certain first-time voters, except that in this bill a current address is required for any of the I.D.s.)
- Complete the standard voter registration form.
- Sign a statement under penalty of perjury that they are a U.S. citizen and reside at the address given.

Once registered at the one-stop site, the person may vote right then. They will vote a retrievable ballot, as do other one-stop voters. If the newly registered person did not want to vote right then, they could come back later and vote, but only at a one-stop site – not by mail absentee and not at the polls on election day.

Within 2 business days after the person has registered at the one-stop site, the board of elections must proceed to verify the person's identity and address. The person's one-stop ballot must be counted unless the board determines that the applicant is not qualified to vote it.

A person already registered may update information on their records at the one-stop site, except that they cannot change party registration before a primary.

Sections 2 and 3 of the bill are cleanup sections. Section 4 requires the State Board of Elections to monitor the implementation of the act and report if and when it is feasible to allow people to register and vote on election day.

EFFECTIVE DATE: The first 3 sections would become effective July 1, 2007, the rest immediately.

BACKGROUND: Seven states allow voter registration on election day. When the forerunner of this bill was introduced in NC, it also called for election day registration. After doubts arose that voters' residences could be verified in time for canvass, one-stop registration was offered as a compromise.

S0195e1-SMRR

FEBRUARY 2007

electionline.org Briefing



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Election-Day Registration: A Case Study

Inside

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Nearly 4,000 people – or one out of every 100 voters – in Montana were able to register or update their registration and vote on the same day during last November's mid-term election, something not permitted in the state since the inception of voter lists.

While the number of election-day registrants caused long lines, poll-worker confusion and headaches in parts of the state – prompting some to call for a quick end to the newly-enacted rules – the results were difficult to ignore: voters who had the opportunity to register and vote on Election Day did so en masse.

In the largely rural state, election officials said they were "overwhelmed" by the turnout. Representatives of groups that encouraged the change, including the League of Women Voters, said the long lines and large crowds were symptoms of a lack of preparation and a failure to adequately anticipate demand. The turnout, they argued, represented "a resounding success."

Montana joined six states around the country allowing the practice of election-day registration (EDR). The process allows those on the fence about participating in an election extra time to make up their minds. If they miss deadlines for registering to vote – a month before an election in some states – they can still have their voices heard and cast a ballot, pro-

vided they live in one of the seven states allowing it.

This, the first in a series of *electionline.org* case studies, examines the implementation, legislative history, practice and outlook for EDR in the states where it is currently permitted and in other parts of the country where it has been or will be considered by lawmakers.

Nationally, EDR has been debated since it was first implemented in three states in the 1970s.

Organizations including Demos, Common Cause and the League of Women Voters have been supportive of efforts to expand EDR beyond Idaho, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming, the seven states that now permit it.

According to Demos, states with EDR consistently lead the national average in turnout, counteract "arbitrary" voter registration deadlines and help numerous Americans who report trouble with registration procedures.[1]

Common Cause reports registration issues were the most frequently-cited problem by voters who called hotlines in 2004. The organization recommends EDR as a solution to registration problems by eliminating registration "as a barrier to voting."[2]

But EDR has its skeptics as well.

Paul Gronke, a political science professor at Reed College, has challenged the notion that EDR increases turnout.

"The major barriers to turnout are voter interest and motivation," Gronke wrote on his blog, *Earlyvoting.net*. "Election reforms are fine as far as they go, but if anyone thinks that minor tweaking around the edges, like same-day registration, will do anything but help turnout a few percentage points, they are sadly mistaken."

Fraud should also be a concern, said election turnout expert Curtis Gans of the Center for the Study of the American Electorate. In states with a history of voter fraud, EDR can exacerbate the problem.

Speaking about a proposal to introduce EDR in Massachusetts in 2005, Gans said EDR offers "no protection against last-minute fraudulent registration or votes in the name of people who have died or moved."

"The question is, has there been fraud in Massachusetts? If the answer is yes, then same-day registration is not good for Massachusetts," he said.[3]

And even in states where it was considered to be a good fit, not everyone is supportive.

Two lawmakers in Montana, troubled by long lines and confusion at some county election offices during the November 2006 election sought to roll back the current law. Those rules allow for a 30-day "late registration period," permitting voters to register and vote at an election office up until polls close on Election Day. With election officials tied up helping would-be voters register and cast ballots until well after polls closed, other needs, such as troubleshooting problems at the polls or answering voter inquiries on the phone, had to be delayed or pushed aside.

EDR bills have been introduced again in several states this year, including Michigan, Hawaii and Utah. But the movement to expand the practice beyond largely rural, low-population states has been static. EDR has been defeated repeatedly in a number of states, including Connecticut, Massachusetts and Texas. Maryland officials, who are considering introducing EDR to the state in 2008, recently concluded a comprehensive study on its advantages and challenges.

Executive Summary

The number of states that allow citizens who delay registering to vote just prior to or on Election Day has recently expanded to seven, with Montana joining the group of primarily Western and rural states in 2006.

Designed to give voters the flexibility to circumvent registration deadlines that occur a month before an election in more than half of the states, election-day registration (EDR) has allowed hundreds of thousands of voters access to the political decision-making process they otherwise would not have or at least permitted more flexibility to delay registering.

Advocates say EDR states consistently lead the national average in turnout, while counteracting registration problems, which are frequently cited by voters as barriers to participation.

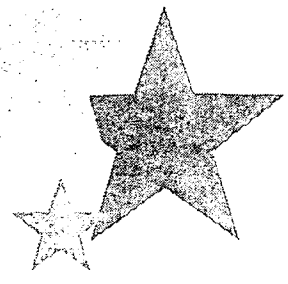
But the practice has also raised concerns, particularly over whether allowing voters to cast ballots on the same day they register fails to provide adequate scrutiny of credentials or potentially allows double voting by permitting someone who might have cast an absentee ballot or voted at another polling place the ability to do so again. One critic said voter interest and motivation, not EDR, are crucial to increasing turnout.

electionline.org examined the states that offer EDR – Idaho, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming – detailing the differences in practices in each.

Montana rolled out EDR – termed "late registration" – for the first time in the 2006 election with mixed success. More than 7,500 voters took advantage of the rules, which allow citizens to register and vote at central offices after the 30-day pre-election registration deadline until the close of polls on Election Day. But along with big crowds came problems in some areas, including long lines and confusion at local precincts when veteran staff and poll workers found themselves helping same-day registrants rather than attending to other duties during the vote. As a result, some local clerks and lawmakers in 2007 were seeking to roll back EDR by ending the late registration period a week or more before Election Day. Advocates, however, pointed to high demand as proof the practice was needed in the state.

Minnesota, which has offered polling-place EDR for more than 30 years, has recorded between 10 and 20 percent of voters registering and casting ballots on Election Day. Officials noted that EDR can make ordering ballots more difficult and lines can get long in some areas. Nonetheless, one county clerk said voters in her county rarely waited more than 20 minutes to register and vote, and a pilot implementation of electronic poll books in several precincts in special elections this year – offering links to the statewide voter registration database – could help add more safeguards against fraud.

Efforts to expand EDR have been unsuccessful other than in largely rural and/or sparsely-populated states. Lawmakers in a number of states – Connecticut, Florida, Illinois, Indiana, Massachusetts, New York, North Carolina and Texas among them – have rejected EDR measures in recent years. Similarly, ballot measures that would allow EDR failed in both California and Colorado in 2002 by substantial margins.



The Montana Experience

In 2006, Montana joined six other states around the country that offer citizens the opportunity to make last-minute decisions about voting. By registering on Election Day, recent arrivals who relocated from another county or state, those roused to action at the last minute by a candidate or ballot issue, or plain old procrastinators could participate in the process despite missing a 30-day cut-off for traditional registration.

Lawmakers enacted a bill (S.B. 302) that allowed a similar version of same-day registration or election-day registration (EDR) found in Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming but with some unique features.

Montana's version of EDR is slightly more restrictive than what is offered in other states. While voters can register and vote in the period between the 30-day cut-off for regular registration and the time the polls close on Election Day, they must do so at a county elections office. The other six states offering EDR allow voters to register and vote at their precinct or at a central location.

According to election administrators, S.B. 302 was a compromise among a number of different factions; among them the state's League of Women Voters, the AFL-CIO, the AARP, Associated Students of the University of Montana, the Secretary of State's office, political parties and county clerks.[4]

"Same-day registration or polling-place registration has always been a big issue: whether or not the person who moves into Montana two weeks before the election should be allowed to vote," said Duane Winslow, director of elections for Yellowstone County. "We were able to compromise in this and allow late registration. So, after the close of registration, if someone who is not registered to vote in the county and has not been issued an absentee ballot in any other county in Montana...we will allow them to register and to be issued a ballot right there in the election administrator's office. They won't be allowed to go to a polling place, but they will be able to [register and vote at a county office] up until Election Day."[5]

With concerns about the limits of Montana's recently-implemented statewide voter registration system and the potential for double-voting or other forms of fraud, state lawmakers embraced a form of election-day registration that does not allow the convenience of polling-place sign up, but nonetheless permits recent arrivals or procrastinators the ability to participate in elections.

The law limits registration to county offices or courthouses where election officials say they can perform necessary checks to make sure a voter has not cast a ballot previously or been issued an absentee ballot in another part of the state.[6]

The roll out

The November 2006 election marked the first time Montana voters had the opportunity to register and cast ballots on Election Day, and from media accounts during and after the vote, the response was overwhelming.

With a hard-fought and high-profile race for U.S. Senate – and with partisan control over the body potentially in the hands of Montana voters – turnout was unusually high at polling places throughout the state, with long lines at locations offering EDR.

Democrat Jon Tester edged incumbent Republican Conrad Burns to take the seat back for the party, which assumed control over the Senate with a single seat advantage.

Countywide turnout at polling places in Missoula was "way, way up for an off year" said Vickie Zeier, county clerk and recorder. She went on to predict "a record number of voters" for a mid-term election, with voters waiting in line for close to two hours for the opportunity to register and vote. In all, 644 people took advantage of EDR in the county.[7]

Caught 'off guard'

Elaine Gravely, state election director, said the high turnout surprised local election officials, many of whom expected the nearly month-long late registration period would help thin lines on Election Day.

"Turnout caught us off guard, to be honest," Gravely said. "Because [current law] is requiring that people can register and vote on the same day at the court house, we had almost 4,000 people on Election Day in Montana. And we're a state with a small population. It created real havoc for election administrators in the state. One county had people in

line voting at midnight."[8]

Winslow, who oversees elections in Yellowstone County, home to more than 92,000 registered voters, reported "steady lines" throughout the day. He attributed the rush on Election Day to a number of reasons, but primarily because the county "didn't do a better job of advertising that they didn't have to wait until Election Day to come in to register and vote."

Winslow said lines were "not as bad" in his county as others in the state, particularly those with large populations of college students. On average, voters waited about 20 minutes, with each registration transaction taking approximately five minutes to complete.[9]

Statewide, 3,947 Montana residents cast ballots using the state's new late registration rules. Another 3,535 registered and voted at county offices in the period between the end of the 30-day registration period and Election Day. In all, late registration led to nearly 7,500 residents voting – or nearly 2 percent of those who cast ballots – who would have otherwise been unable to vote under previous rules.[10]

Whether the new law or a high-interest U.S. Senate race contributed to the election's higher-than-usual turnout is a question left for political scientists to debate. What is known, however, is that turnout among registered voters stood at 63 percent, a dramatic 10-point increase over the 2002 midterm vote, and the highest figure in the state in a mid-term since 1994.[11]

> ...we're a state with a small population. It created real havoc for election administrators in the state. One county had people in line voting at midnight.
>
> –Elaine Gravely, Montana election director

An 'embarrassment?' A 'win?' Or both?

Votes were still being counted two days after Election Day, resulting in Jim Farrell, the state Democratic Party chair, declaring the vote "an embarrassment in the eyes of the whole country."[12]

Farrell told reporters that Secretary of State Brad Johnson (R) failed to prepare local officials for the crush of election-day registrants, a charge that Gravely denied.

"We did a lot of training," she said. "What you had was everything from [Help America Vote Act] deadlines suddenly hit at the same time. We had the statewide voter registration database, the new AutoMark [accessible voting] machines, provisional ballots, voter identification and election-day registration. The clerks were just overwhelmed."[13]

The experience of late registration, while trying for voters and some local officials, was nonetheless a success because it expanded the vote to thousands who otherwise wouldn't have had the opportunity to vote, wrote Mike Cooney, a former Montana secretary of state in an editorial.[14]

"As often happens with elections, Montanans became motivated and engaged in the closing days of the 2006 campaign," Cooney wrote, with former Connecticut Secretary of State Miles Rapoport. "[EDR rules] eliminated arbitrary registration deadlines and opened the door for thousands of citizens to exercise their most basic democratic right. Montana now joins its neighbors, Idaho and Wyoming, and four other states offering EDR – states which consistently rank among the top 10 in voter turnout."[15]

Rollback efforts

With the problems at the polls – and perhaps some partisan ill will after a hard-fought but unsuccessful election for Republicans in November – some lawmakers are seeking to eliminate the option of election-day late registration in the state by rolling back the deadline to the Friday before an election or earlier.[16]

Rep. Tom McGillvray, R-Billings, proposed a measure (H.B. 281) that

would allow residents to register as late as four days (or the Friday) preceding an election, eliminating the option to register and vote on Election Day itself.[17]

Rep. Rick Jore, a member of the Constitution Party representing Ronan, filed a bill (H.B. 266) that would end the registration period 14 business days before an election, further curtailing the late-registration rules in the state.[18]

Jore said he was disturbed by reports of long lines and confusion at polling places.

"My concern is that we're diminishing the integrity of the elections process," Jore said at the hearing.[19]

Opponents of the bill said the long lines in November 2006 proved that same-day registration was serving its intended purpose – increasing the number of Montanans participating in the vote.

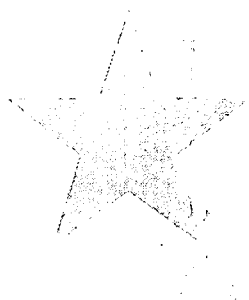
"I certainly know that there was some difficulty in terms of long lines, but that just showed that all of those folks voted. There was no voter fraud. We're just working out the technicalities," said Terry Kendrick, a representative of Montana Women Vote, a group that encourages women's political participation.[20]

Sara Busey, HAVA representative for the League of Women Voters of Montana, said her group opposes any efforts to curtail EDR.

"The month leading up to election day on Nov. 7 saw 3,535 people register to vote statewide; on Election Day, an additional 3,947 registered and voted," she said. "EDR was a resounding success in terms of providing access to voting. The push for curtailing EDR is coming from the clerks and recorders who weren't prepared for the rush and had to pull experienced staff off [of supporting] precincts to register folks at the court house. We feel this is a problem easily overcome with proper preparation."[21]

McGillvray's bill passed the Republican-controlled House by a 52-48 margin, with Senate debates underway at press time. Most in Montana expect EDR will become a mainstay in the state's elections, at least if the partisan numbers hold up.

"Realistically, I doubt there will be any change," Winslow said. "As it becomes more partisan, Democrats will want to keep the system as it is. And Democrats have the Senate and governor's office."[22]



Montana's Late Registration Process

Unlike other states that offer election-day registration, Montana offers a "late-registration period," designed to allow similar flexibility to voters who can cast ballots up until polls close on Election Day even if they miss the state's 30-day pre-election registration deadline.

But it does not permit voters to register and vote on Election Day at local precincts. Because the statewide voter registration database is only online at county registrar offices, the state's late-registration law limits the process of same-day registering and voting to one centralized location in each county.

A voter who has missed the state deadline is given a registration form at an election office. Identification is required in the state to vote, and the list of acceptable verification includes photo and non-photo documents.

After a voter fills out the form, the statewide registry is checked to make sure the record is not a duplicate and the voter has not been issued an absentee ballot. If the application is accepted, the voter casts a regular ballot at the central location.

Minnesota: An Election-Day Registration Pioneer

With more than 30 years experience registering voters on Election Day, Minnesota is frequently cited as a model of success by proponents of the process, though election-day registration (EDR) is not uniformly supported.[23]

In 1973, Minnesota made sweeping changes to its voter registration process, including allowing EDR. The legislation also mandated that all jurisdictions maintain voter registration, altering rules that had previously allowed jurisdictions with fewer than 10,000 people – representing about one-third of the state – to operate without rolls.[24]

Not only did EDR represent a new wrinkle in Minnesota elections, it also meant that for many, it would be their first experience registering at all.

The process

Like nearly all states that require voter registration, Minnesota closes its registration rolls before an election, allowing time to verify new registrants, clean up duplicates and perform other maintenance before the vote. Regular registration closes 21 days prior to Election Day, and voters who sign up before the deadline are termed pre-registered voters.

When voters enter a polling place, they are directed either to a table for those who need to register to vote or a table for those who are pre-registered. A registration judge conducts EDR. The judge is prohibited by law from handling the ballots of same-day registrants.[25]

The judge first checks if the voter is in the correct precinct by examining a precinct map. Voters must be in the correct precinct to register. If not, they are re-directed.

If in the correct precinct, the voter completes a new voter registration card and provides identification. Acceptable forms include a Minnesota driver's license with a current address; a notice of late registration; a U.S. passport with a utility bill; a U.S. military photo ID card with a utility bill; an oath of a registered voter in a precinct (also known as vouching); or a student ID, registration, or fee statement with a current address.[26]

When the form is completed and the voter's identity has been verified, they are then asked to add their name, address, date of birth and signature to a blank line in the poll book. After this the voter is given a receipt and then directed to the ballot judge.[27]

The first 30 years of EDR

When EDR was first authorized, the state provided funds to assist local jurisdictions with implementation. The state initially authorized $125,000. Local jurisdictions soon discovered it was far from enough. In all, $800,000 was required for that year. Eventually, the state left jurisdictions to fund EDR themselves as part of regular election expenses.[28]

The election of 1976 was the first presidential vote in which same-day registration was permitted, and there were more EDR registrants than expected, causing some administrative problems at the polls.

The state estimated about 10 percent of voters would register on Election Day. In actuality, more than one in five state voters registered the same day they cast ballots, the highest rate since EDR's inception.

This, coupled with a high turnout (73 percent of eligible voters cast ballots[29]) led to long lines at some polling places, voters registering at the wrong polling place and some same-day registrants being allowed to cast ballots without being properly identified.[30]

However, with experience, more realistic estimates of EDR turnout and updated election procedures, officials and observers say these issues have mostly been addressed.[31]

Over the past 30 years, the number of Election Day registrants has remained fairly steady, with approximately 13 percent of voters registering to vote on Election Day during off-year elections, and nearly 19 percent during Presidential elections.[32]

State and local election officials have also stepped up voter education on EDR, while the statewide voter registration database has allowed for a more complete and up-to-date voter list.[33]

Local snapshot: Anoka County and EDR in 2006

Anoka County, the fourth-most populous of Minnesota's 87 counties, registered approximately 17,000 voters on Election Day in November 2006. The county had a little more than 183,000 pre-registered voters prior to the general election.[34]

After the election, five county election staffers spent approximately

six weeks entering and updating voter registration records, completing the task in mid-January.[35]

County clerk Rachel Smith said she believes EDR safeguards the integrity of voter rolls.

"It provides us with the most up-to-date information on the voter," she said. "It assures that individuals are voting for offices and districts where they live on Election Day and it eliminates the need for provisional ballots because we resolve any voter registration issues that day."[36]

Challenges and responses

There are some administrative challenges to using EDR in Minnesota, but officials say they are manageable.

"[EDR] can sometimes make ballot orders slightly more difficult because there is more flexibility on the number of people that can show up to vote. There are [also] some technical issues in working with what is considered legal identification that election judges frequently get confused, but the county does provide 'cheat sheets' and is always available for questions," said Smith, referring to her experience in Anoka County.[37]

Two other major concerns critics have about EDR are the potential for voter fraud, i.e. voters casting more than one ballot, and longer lines at the polls due to the EDR check-in process.

In the past, former Minnesota Secretary of State Mary Kiffmeyer (R), who supported continued use of EDR in the state, expressed one of those concerns.

"We have long lines because of same-day. People get frustrated and leave."[38]

Gary Poser, the state's election director, acknowledged that while long lines can be a problem, election officials have responded to this issue.

"Longer lines can be expected in precincts where numerous new registrants might be anticipated - near college campuses, near large apartment complexes and in areas with new housing developments," he said. "Precincts in these areas may hire additional election judges to help administer anticipated larger numbers of EDR voters. Accurate news media articles on acceptable proofs of residence can also help voters bring the appropriate documentation to the polling place to keep the process moving."[39]

Smith said it is not a problem she has encountered much in Anoka County, noting the county rarely sees long lines and that at peak times voters probably don't wait more than 15 to 20 minutes to register.[40]

On voter fraud, both Poser and Smith agree there is little evidence of EDR leading to double-voting or other voter fraud and in fact may be less prone to fraud than other means of registering to vote.

"EDR is an in-person registration with an election official (poll worker) where an authorized proof of residence is shown. EDR has less fraud potential than a mail registration," said Poser.[41]

Smith said she knew of one instance of potential voter fraud in 2004 in her county – where a voter cast both an absentee ballot and voted on Election Day in another precinct. The case could not be pursued by the county attorney because of the mental state of the individual and an inability to establish intent, she said.

She said she does not know of recent instances of voter fraud in Anoka County and describes how they check for this when inputting registration information into the state database.

"The statewide [voter registration] system will immediately notify us if a voter voted more than once," she said. 'We also send a non-forwardable postcard to each voter when they register to vote and if the postcard is returned, we will immediately investigate. The majority of the postcards that are returned are due to moves during December and January following an election and therefore are also not fraudulent."[42]

What's next

The state is hoping to test electronic poll books in select precincts in upcoming special elections in 2007. An informal request for proposal has been issued for such poll books, which may either have a real-time connection to the statewide voter registration database or may hold data that will be uploaded to the database after the election. For the potential upcoming pilot project, the state will use a parallel approach, using the new electronic poll books along with the printed rosters.[43]

Election-Day Registration Outside of Montana and Minnesota

Along with Minnesota and Montana, five other states — Idaho, Maine, New Hampshire, Wisconsin and Wyoming — also permit election-day registration (EDR).

Wyoming was the first to allow EDR when in 1945 the practice was allowed at primaries in several rural counties, cities and municipalities that had fewer than 1,000 votes cast in the previous election. EDR was used for the first time in primary elections in Wyoming in 1952, and for the first time in general elections in 1994. In 2003, it was permitted in all elections except "special district elections."[44]

The state has a 30-day cut-off period for voter registration prior to each election; however, if someone misses the 30-day deadline they may go to their county courthouse, register to vote and vote in-person absentee at the same time.[45]

Citizens in Wisconsin may register to vote on Election Day as well by filling out a special voter form (EB-131) at their polling place. Those wishing to register must provide a driver's license number (or state-issued ID or the last four digits of their Social Security number) and have proof of residence indicating they have lived at their current address for at least 10 days prior to the election.[46]

If a registrant does not have a license with them and does not know the number, they are permitted to vote a provisional ballot. They then have until 8 p.m. to return to the polling place with the necessary identification, or they may fax it by 4 p.m. the next day.[47]

Voters have until 5 p.m. on the day prior to the election to register to vote, but sometimes, even that's not quite enough time.

"Obviously I knew the election was coming up, but I just never got around to registering. I'd like to blame it on the fact that I was in my third-trimester [of pregnancy] at the time, but really, I can't," said Jen Fudge of Wauwatosa who recently moved back to Wisconsin. "But it was great to know that I could register and vote on Election Day. The whole process took me about five minutes to register. It actually took longer to vote."[48]

Voter registration in New Hampshire closes 10 days prior to an election; however, those who do not meet that deadline may register to vote on Election Day. Unlike Wisconsin, which requires that voters be residents for at least 10 days prior to an election, New Hampshire mandates no such minimum residency. Those who are unable to make it to the town or city clerk's office prior to the election need only bring proof of age, citizenship and domicile to the polling place with them on Election Day.[49]

According to its Web site, Maine has one of the most accessible voting processes in the country. Voters who do not complete their voter registration form at least 20 days prior to an election may register to vote in person through and including on Election Day. Voters wishing to register in person must show proof of identity and residency.[50]

Voters who are unable to either register in person or by mail at least 25 days prior to an election may register to vote on Election Day in Idaho. Those wishing to register via EDR in Idaho must provide proof of residence along with a photo ID. Idaho permits college students with a valid student ID and a current student fee statement that contains the student's valid address in the precinct to register as well.[51]

The North Dakota exception

North Dakota is the only state in the nation without some form of voter registration. It could also be argued that North Dakota was actually the first state to support EDR when, in 1895, the North Dakota Legislative Assembly passed a law requiring voter registration, part of which allowed an unregistered voter to appear at the polls on Election Day and vote after they filled out an affidavit swearing to the fact that they were indeed a resident.[52]

In 1951, North Dakota repealed mandatory voter registration and left registration optional with governing boards of municipalities. Although there have been several legislative attempts to reinstitute voter registration, all have either failed at the state legislature level or been vetoed by the governor.[53]

Today, in order to vote in North Dakota, one needs to be 18, a U.S. citizen and have lived in North Dakota for 30 days preceding the election. To prove that, citizens need a valid ID (driver's license, tribal ID, student ID, etc.), a utility bill dated 30 days prior to Election Day or a change of address verification letter from the U.S. Postal Service. If a potential voter does not have one of those forms of ID, they may still vote if a poll worker is able to vouch for their identity or they complete a voter's affidavit.[54]

Legislative Outlook

Connecticut's 'Presidential Ballots'

While stopping short of allowing EDR, the Nutmeg State has a unique system allowing unregistered residents to cast ballots on Election Day, but only for the office of President. While voters are not required to register at the time they cast these ballots, registration can be offered by the clerk.

In place since 1963, the "Presidential Ballot" directs unregistered voters to town clerk offices beginning up to 45 days before an election and ending, until recently, a week before the vote. In 1997, the law was amended to allow presidential balloting until polls close on Election Day.[55]

To receive the ballot, applicants must sign a form attesting they are a U.S. citizen of legal age, have not forfeited their right to vote (by committing certain crimes), are a resident of the town or a former resident who has moved within the past 30 days and they have not nor will not cast any other ballot. Since 2004, applicants also have to provide qualifying photo or non-photo identification.[56]

The 2000 vote, the first Election Day allowing same-day Presidential voting, saw a huge jump in presidential ballots – from about 1,000 in 1996 to more than 30,000 in the 2000 general election.

The crush of same-day presidential voters caused some problems at clerks' offices, including long lines, ballot shortages and concern over fraud – a worry shared by lawmakers who in 2004 opted to require presidential ballot voters to show identification when applying for the ballot.[57]

Election-day registration (EDR) has been limited to largely rural and sparsely-populated states. Maine, Minnesota and Wisconsin have permitted the practice since the 1970s, while New Hampshire, Idaho and Wyoming adopted it statewide beginning in the 1990s.

It took another decade for an additional state to join the small group, when Montana lawmakers adopted a late-registration process in 2005.

Legislative failures have been plentiful in recent years. Bills introduced in 12 states – Connecticut, Florida, Illinois, Indiana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oregon, Texas and Utah – failed in 2005 sessions. A year earlier bills failed in 13 states, among them Alaska, Hawaii, Massachusetts, Missouri, Pennsylvania, Ohio, Tennessee and Vermont.[58]

With bill failures widespread, it would seem the prospects for this year's crop of bills are bleak, especially with repeat efforts in Illinois, Indiana and Texas.[59] Michigan state Sen. Liz Brater, D-Ann Arbor, introduced S.B. 13 in early January to allow polling-place EDR.

Brater said partisan politics would likely keep her bill from succeeding. Democrats have control of the governorship and state House in Michigan, but are a minority in the state Senate.[60]

With a district that includes the University of Michigan, Brater said the introduction of EDR in the state would get more young people voting and increase participation statewide, as evidenced by turnout rates in states which offer it. And with Michigan's Qualified Voter File able to check against duplicate or fraudulent registrations and double voting, Brater said "people who have considerable expertise in election law have endorsed this concept."[62]

Edward Foley, a law professor at the Moritz School of Law at The Ohio State University, said partisanship and EDR are more nuanced than the simple notion that Democrats support and Republicans oppose EDR.

"Strategic considerations do not fully explain the positions of the two parties in these voting administration debates. Rather, their different positions conform to their overall ideological differences," Foley said. "Democrats, tending generally to value equality and civil rights over the detection and punishment of crimes, would be expected to value guaranteeing equal access to the electoral process over prevention of election fraud. Republicans, conversely, being more law-and-order in general than Democrats, would naturally be inclined to see stopping election fraud as a higher value than removing all obstacles to the casting of a ballot."

Efforts to repeal

While not as common as bills to introduce EDR, efforts to repeal it are underway in at least one state. Long lines and confusion at clerk/recorder offices in parts of Montana led two lawmakers – one Republican and the other a member of the conservative Constitution Party



Demos said the citizens of Colorado and California were "losing out" by defeating the measures. In a press release, the organization blamed "a campaign of misinformation and distortion... [caused] the initiatives' defeats."

– to introduce legislation to alter the state's late registration period, closing the rolls four to 14 days before Election Day.[62]

That effort was dismissed by some as partisan ill-will after a Democratic upset in the race for the U.S. Senate.

"Election-day registration was not partisan [in the state] before 2006," said Sara Busey of Montana's League of Women Voters. "But it has become somewhat due to the very closeness of the parties in the legislature. A heavy turnout on Election Day at court houses to register and vote occurred in heavily Democratic areas. Some feel that allowed Jon Tester (D) to defeat [then-incumbent] Sen. Conrad Burns (R)."[63]

While the correlation between party preference and EDR is not always present, searches across the country looking at bills to expand or restrict registration procedures closer to or on Election Day show some patterns.

Republican lawmakers have sought to restrict efforts to introduce EDR or roll back existing rules allowing it; Democrats have sought to increase EDR in states and oppose measures to curtail its use in states that allow it.

The people choose – and pick 'No'

Brater said she would consider trying to take the issue of EDR directly to voters in the form of a ballot question to circumvent Republican opposition in the legislature.

Voters in California and Colorado have both had the opportunity to vote on measures that would allow EDR in their states, and in both cases, rejected it by substantial margins.

In California, EDR failed by 20 percentage points in the 2002 election, despite efforts by Demos, a New York-based organization that supports EDR, and others to convince voters that it would increase turnout. The state Republican Party led the opposition to Proposition 52, press reports indicated, along with then-Secretary of State Bill Jones.[64]

Voters were apparently receptive to arguments put forth by Prop. 52 opponents, which included assertions that permitting EDR would "make it easier for criminals and non-citizens to vote."

"Hidden in the fine print is a change in the law that makes proving fraud almost impossible," stated the official rebuttal to Prop. 52 on state voter guides. "The authors of Prop. 52 are trying to fool you with talk of tough penalties. Tough penalties mean nothing if it's impossible to prove the crime was committed."[65]

That same year, Colorado voters rejected EDR by an even greater margin. Amendment 30, as it was called on ballots, garnered just over 37 percent of the vote.[66]

Demos said the citizens of Colorado and California were "losing out" by defeating the measures. In a press release, the organization blamed "a campaign of misinformation and distortion....that caused the initiatives' defeats."[67]

SNAPSHOT OF THE STATES: Election-Day Registration States

Idaho

Voter registration deadline (pre-election): 25 days[68]
EDR location: Polling place[69]
Non-EDR voter identification requirements: Driver's license number or last four digits of Social Security number. A voter who lacks documentation checks a box indicating so on a registration form.[70]
EDR voter identification requirements: Driver's license or state identification card issued through the department of transportation; any document which contains a valid address in the precinct together with a picture identification card; or current valid student identification card from a post-secondary educational institution in Idaho accompanied with a current student fee statement that contains the student's valid address in the precinct with a picture identification card.[71]
2004 registration: 798,015; EDR registrants: 117,622[72]
2006 registration: 764,880; EDR registrants: 54,531[73]

Maine

Voter registration deadline (pre-election): 21 days before election if registering by mail. No deadline for in-person voting.[74]
EDR location: Polling place[75]
Non-EDR voter identification requirements: Driver's license number or last four digits of Social Security number. A voter who lacks both forms checks a box indicating so on the registration form.[76]
EDR voter identification requirements: Same as non-EDR requirements.[77]
2004 registration: 1,023,956; EDR registrants: Unavailable
2006 registration: Unavailable; EDR registrants: Unavailable

Minnesota

Voter registration deadline (pre-election): 21 days[78]
EDR location: Polling place[79]
Non-EDR voter identification requirements: Driver's license number; or last four digits of Social Security number. A voter who lacks documentation checks a box indicating so on the registration form.[80]
EDR voter identification requirements: Driver's license, learner's permit, identification card, or receipt for one, with current address; tribal ID; if Minnesota license, tribal ID or state ID has a former address, a voter can present a current utility bill with address; "Notice of Late Registration" postcard; U.S. passport with utility bill; U.S. military photo ID card with utility bill; voter's prior registration listed on roster at former address in precinct; oath of a registered voter in precinct vouching for residence; student ID, registration, or fee statement with current address, utility bill.[81]
2004 registration: 3,569,917; EDR registrants: 592,421[82]
2006 registration: 3,410,683; EDR registrants: 292,168[83]

Montana

Voter registration deadline (pre-election): 30 days. At end of the period, applicants must register and vote at local election offices.[84]
EDR location: Local election offices.[85]
Non-EDR voter identification requirements: Registrant must provide a driver's license or last four digits of Social Security number. Those with neither a driver's license nor a Social Security number must provide (in person) or enclose (by mail) a copy of one of the following: any photo ID with their name; or a current utility bill, bank statement, paycheck, government check or other government document that shows name and current address.[86]
EDR voter identification requirements: Same as non-EDR requirements.[87]
2004 registration: 638,474;[88] EDR registrants: Not applicable.
2006 registration: 649,436;[89] EDR registrants: 3,947[90]

New Hampshire

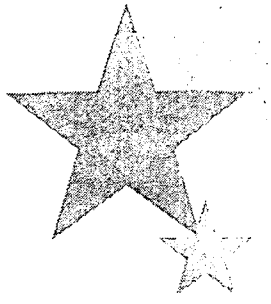
Voter registration deadline (pre-election): 10 days[91]
EDR location: Polling place[92]
Non-EDR voter identification requirements: Driver's license number or last four digits of Social Security number.[93]
EDR voter identification requirements: Registrant must prove citizenship, age, and domicile. A birth certificate, U.S. passport, naturalization papers if the applicant is a naturalized citizen, a citizenship affidavit and a domicile affidavit are acceptable.[94]
2004 registration: 855,861; EDR registrants: 94,431[95]
2006 registration: 848,317; EDR registrants: 25,924[96]

Wisconsin

Voter registration deadline (pre-election): 21 days before election if registering by mail. If registering to vote in person at the municipal clerk's office, can register up until 5 p.m. the day before an election.[97]
EDR location: Polling place[98]
Non-EDR voter identification requirements: Driver's license number, other state-issued ID card or last four digits of Social Security number or their state ID card. A voter who lacks acceptable forms checks a box indicating so on the registration form.[99]
EDR voter identification requirements: Wisconsin driver's license or other state-issued ID; employee ID with or without photo; a real estate tax bill or receipt for the current year or the year preceding the date of the election; a current residential lease; a university, college or technical institute fee card with photo; a university, college or technical institute identification card with photo; a utility bill for the period commencing not earlier than 90 days before election day; bank statement; paycheck; a check or other document issued by a unit of government.[100]
2004 registration: Unavailable; EDR registrants: Unavailable
2006 registration: 3,450,258; EDR registrants: 360,059 (not including Deerfield and Unity)[101]

Wyoming

Voter registration deadline (pre-election): 30 days. At the end of period, applicants must register and vote at local election offices.[102]
EDR location: Polling place[103]
Non-EDR voter identification requirements: Driver's license number or last four digits of Social Security number.[104]
EDR voter identification requirements: Same as non-EDR requirement.[105]
2004 registration: Unavailable; EDR registrants: Unavailable
2006 registration: Unavailable; EDR registrants: Unavailable



Methodology

Research was compiled through the use of primary and secondary sources, including interviews with state and local election officials, state election division Web sites, news accounts, data derived from state law, information provided by other non-governmental organizations and an election reform information database created by the National Conference of State Legislatures.

All sources are cited below in the endnotes.

The opinions expressed by election officials, lawmakers and other interested parties in this document do not reflect the views of non-partisan, non-advocacy *electionline.org* or the Election Reform Information Project.

All questions concerning research should be directed to Sean Greene, research director, at sgreene@electionline.org.

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Senate Judiciary I Committee
March 20, 2007
Minutes

The Senate Judiciary I Committee met at 10:00 am on Tuesday, March 20, 2007 in Room 1027 of the Legislative Building. A quorum was present.

Senator Martin Nesbitt called the meeting to order and recognized Senator Janet Cowell to explain **SB 211** *(Electronic Signatures/Public Agencies).*

Senator Cowell explained that the bill clarifies that public agencies may not only accept electronic signatures, but may also use them.

Lee Mandell, with the League of Municipalities, spoke in support of **SB 211**.

Senator Hoyle moved for a favorable report and the motion carried.

Senator Dan Clodfelter presided what Chairman Nesbitt brought **SB 630** *(NC Arboretum Campus Police*) before the committee for consideration. A proposed committee substitute was handed out, Senator Stevens moved for its adoption and the motion carried.

Senator Nesbitt told the committee that **SB 630** would amend the statute authorizing the establishment of campus law enforcement agencies by extending this authority to the Board of Directors of the North Carolina Arboretum. The Proposed Committee Substitute would make a technical change to add gender neutral language to the statute.

Senator Stevens was recognized and moved for a favorable report for the Proposed Committee Substitute for **SB 630**, unfavorable to the original bill. The motion carried.

Senator Nesbitt recognized Senator Hoyle to make comments on **SB 6** (Early Organization Session).

A Proposed Committee Substitute for **SB 6** was brought before the committee and Senator Clodfelter moved for its adoption. The motion carried.

Senator Hoyle explained that the original **SB 6** would have proved for a one-day organizational session, followed by an extended recess, and that the PSC for **SB 6** changed the duration to a two-day session.

Discussion followed. It was pointed out that this wouldn't work unless the House of Representatives die the same thing.

Senator Rand was in favor of leaving things as they are now. Senator Clodfelter wondered if you could file bill in the organizational session and he felt that something needed to by added to the North Carolina General Statutes with regard to this initiative.

Senator Graham wondered if the Senate could hold its organizational session in December and Committee Counsel, Erika Churchill, advised the members that the Constitution prohibits the Legislature from meeting in December.

Senator Nesbitt acknowledged that there seemed to be problems with the effectiveness of a bill like this and he appointed Senator Rand, Senator Clodfelter, Senator Phil Berger, and Senator Hoyle to a subcommittee to work further on the bill.

The meeting adjourned at 10:50 a.m.

(A copy of SB 211, an Analysis of SB 211, copy of SB 630, an Analysis of the PCS for SB 630, copy of SB 6, PCS for SB6 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, and 8 respectively. Also attached are various statements and letters supporting SB 630.)

Respectively Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette Whaley Lee

Janette Whaley Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 211

Short Title:	Electronic Signatures/Public Agencies.	(Public)
Sponsors:	Senators Cowell; Goodall and Jones.	
Referred to:	Judiciary I (Civil).	

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING ELECTRONIC SIGNATURES BY CLARIFYING THAT PUBLIC AGENCIES MAY USE, AS WELL AS ACCEPT, ELECTRONIC SIGNATURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58.4 reads as rewritten:

"**§ 66-58.4. Use of electronic signatures.**

All public agencies may use and accept electronic signatures pursuant to this Article, pursuant to Article 40 of this Chapter (the Uniform Electronic Transactions Act), or pursuant to other law."

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

SENATE BILL 211:
Electronic Signatures/Public Agencies

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 15, 2007
Introduced by:	Sen. Cowell	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: The First Edition of Senate Bill 211 clarifies that public agencies may not only accept electronic signatures, but may also use them.

CURRENT LAW: In 1998 the General Assembly enacted the Electronic Commerce Act, stating as its purpose to facilitate electronic commerce with public agencies. It stated that public agencies could accept electronic signatures. *Article 11A of Chapter 66.*

In 2000 the General Assembly enacted a broader law called the Uniform Electronic Transactions Act, based on federal legislation, whose purpose was to facilitate electronic commerce not just with public agencies, but generally. *Article 40 of Chapter 66.* That act provided that "a record or signature may not be denied legal effect or enforceability solely because it is in electronic form." *G.S. 66-317.*

The two acts contained different definitions and some overlapping provisions. In 2003, the General Assembly enacted a bill to make clear that public agencies could accept electronic signatures not only pursuant to the 1998 government act but also pursuant to the 2000 general act. *G.S. 66-58.4.* The 2003 act, however, did not broaden the wording from "accept" to "use and accept."

BILL ANALYSIS: SB 211 changes the wording that says public agencies may "accept" electronic signature to "use and accept."

EFFECTIVE DATE: When the act becomes law.

BACKGROUND: The bill was requested by the N.C. League of Municipalities. At least one city attorney raised the question: Could someone argue that in transactions with others, public agencies may accept electronic signatures, but did not have the authority to use an electronic signature on its own documents? The League of Municipalities felt that public agencies did have the authority to use electronic signatures under the 2000 act, but sought clarifying legislation to remove all doubt.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 630

Short Title: NC Arboretum Campus Police. (Public)

Sponsors: Senator Nesbitt.

Referred to: Judiciary 1 (Civil).

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA ARBORETUM TO ESTABLISH A CAMPUS LAW ENFORCEMENT AGENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-40.5 reads as rewritten:

"**§ 116-40.5. Campus law enforcement agencies.**

(a) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, may establish a campus law enforcement agency and employ campus police officers. Such officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the institution employing him and that portion of any public road or highway passing through such property or immediately adjoining it, wherever located.

(b) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(c) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board

of any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(d) The Board of Trustees of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any other constituent institution of The University of North Carolina to extend the law enforcement authority of its campus police officers into any or all of the other institution's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 630
PROPOSED COMMITTEE SUBSTITUTE S630-CSTC-2 [v.1]

3/16/2007 4:53:09 PM

Short Title: NC Arboretum Campus Police. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA ARBORETUM TO ESTABLISH A CAMPUS LAW ENFORCEMENT AGENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-40.5 reads as rewritten:

"**§ 116-40.5. Campus law enforcement agencies.**

(a) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, may establish a campus law enforcement agency and employ campus police officers. Such officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the institution employing ~~him~~ the campus police officer and that portion of any public road or highway passing through such property or immediately adjoining it, wherever located.

(b) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(c) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North

Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(d) The Board of Trustees of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any other constituent institution of The University of North Carolina to extend the law enforcement authority of its campus police officers into any or all of the other institution's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

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

SENATE BILL 630:
NC Arboretum Campus Police

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 20, 2007
Introduced by:	Sen. Nesbitt	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S630-CSTC		Committee Counsel

SUMMARY: Senate Bill 630 would amend the statute authorizing the establishment of campus law enforcement agencies by extending this authority to the Board of Directors of the North Carolina Arboretum. The Proposed Committee Substitute would make a technical change to add gender neutral language to the statute.

CURRENT LAW: G.S. 116-40.5 authorizes the Boards of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with constituent institutions of The University of North Carolina, to establish a campus law enforcement agency and employ campus police officers.

Officers employed by campus law enforcement agencies under this section are required to comply with the requirements of the Criminal Justice Education and Training Standards Commission set out in Chapter 17C of the General Statutes, are constitutionally sworn law enforcement officers, and have the powers of law enforcement officers generally. The territorial jurisdiction of such officers includes the property owned and leased to the employing institution and the portions of any public road or highway passing through or immediately adjoining the property.

Boards of Trustees establishing campus law enforcement agencies may also enter into joint agreements with the governing boards of municipalities, counties, and any other constituent institution of The University of North Carolina to extend the law enforcement authority of campus police into those jurisdictions.

BILL ANALYSIS: Senate Bill 630 would amend G.S. 116-40.5 by authorizing the Board of Directors of the North Carolina Arboretum to establish a campus law enforcement agency, and if such an agency is established, to enter into joint agreements with governing boards of municipalities, counties, and any other constituent institution of The University of North Carolina to extend the law enforcement authority of campus police into those jurisdictions. Currently, the police force employed by the North Carolina Arboretum is governed by the Company Police Act, Chapter 74E, and does not have territorial jurisdiction outside of the Arboretum property.

The Proposed Committee Substitute would make a technical correction by amending the statute to add gender neutral language.

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: The North Carolina Arboretum, located in Asheville, was established by statute in 1985, and focuses on education, economic development, research, conservation, and garden demonstration with respect to landscape, architecture, and plant sciences. The Arboretum covers 434 acres located within the Bent Creek Experimental Forest of the Pisgah National Forest, and adjoins the Blue Ridge Parkway. It is administered by The University of North Carolina through a Board of Directors established by statute.

S0630e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 6

Short Title:	Early Organizational Session.	(Public)
Sponsors:	Senators Hoyle; Atwater, Berger of Franklin, Berger of Rockingham, Bingham, Boseman, Clodfelter, Dalton, Dannelly, Dorsett, Forrester, Garrou, Goodall, Graham, Hagan, Jenkins, Jones, Kerr, Kinnaird, Nesbitt, Purcell, Queen, Rand, Snow, Soles, Stevens, Swindell, and Weinstein.	
Referred to:	Judiciary 1 (Civil).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN EARLIER CONVENING OF THE GENERAL ASSEMBLY FOR A ONE-DAY ORGANIZATIONAL SESSION FOLLOWED BY AN EXTENDED RECESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at ~~12:00 noon~~ 10:00 A.M. on the ~~third Wednesday after the second Monday~~ second business day in January next after their ~~election~~.election, except if that day is a Friday, the session shall instead convene on Thursday, January 2. The Senate and House shall convene that day for a two-day session. When the Senate and House of Representatives adjourn on the second day, they stand adjourned until 12:00 noon on the third Wednesday thereafter."

SECTION 2. This act becomes effective January 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 6
PROPOSED COMMITTEE SUBSTITUTE S6-PCS55309-LB-2

Short Title: Early Organizational Session. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN EARLIER CONVENING OF THE GENERAL ASSEMBLY FOR A TWO-DAY ORGANIZATIONAL SESSION FOLLOWED BY AN EXTENDED RECESS.

The General Assembly of North Carolina enacts:

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SECTION 2. This act becomes effective January 1, 2009.

SENATE BILL 6:
Early Organizational Session

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	March 19, 2007
Introduced by:	Sen. Hoyle	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S6-PCS55309-LB-2		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 6 would provide for a two-day early organizational session of in each odd-numbered year.

CURRENT LAW: Section 11 of Article II of the North Carolina Constitution provides that the General Assembly shall convene regular sessions on the day prescribed by law. Neither chamber may proceed upon public business unless a majority of its members are actually present. The General Assembly convenes in the odd-numbered years at 12:00 noon on the third Wednesday after the second Monday of January. G.S. 120-11.1.

Section 20 of Article II of the North Carolina Constitution provides that the two chambers may jointly adjourn to any future day or other place. Of its own motion, either chamber may adjourn for three days or less.

BILL ANALYSIS: The proposed committee substitute would add a two-day organizational session beginning the second business day in January of the odd-numbered years. If second business of January fell on a Friday, the two-day session would begin on the Thursday before that year.

Upon conclusion of the two-day early organizational session, the General Assembly would stand adjourned until 12:00 noon on the third Wednesday after the organizational session.

EFFECTIVE DATE: Effective January 1, 2009.

S0006e1-SMST-PCS55309-LB-2

SENATE BILL 6:
Early Organizational Session

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 19, 2007
Introduced by:	Sen. Hoyle	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S6-PCS55309-LB-2		Committee Counsel

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EFFECTIVE DATE: Effective January 1, 2009.

S0006e1-SMST-PCS55309-LB-2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 6
PROPOSED COMMITTEE SUBSTITUTE S6-PCS55309-LB-2

Short Title: Early Organizational Session. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN EARLIER CONVENING OF THE GENERAL ASSEMBLY FOR A TWO-DAY ORGANIZATIONAL SESSION FOLLOWED BY AN EXTENDED RECESS.

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SECTION 2. This act becomes effective January 1, 2009.

The University of North Carolina

Reclassification of NC Arboretum Special Police to NC Arboretum Campus Police

- The Arboretum is 434 acres located in the 6,300 acres of the Bent Creek Experimental Forest of Pisgah National Forest, adjoining the Blue Ridge Parkway. The North Carolina Arboretum now manages over 250,000 visitors per year, with growth occurring at an average growth rate of 10% rate annually.

- The Arboretum receives law enforcement assistance from Buncombe County Sheriff's Department, North Carolina State Highway Patrol, United States Marshall, Blue Ridge Parkway enforcement, North Carolina Wildlife law enforcement, and United States Forest Service law enforcement.

- The response time for back-up assistance to Arboretum officers from adjoining law enforcement agencies may be as long as 20 minutes.

- If Arboretum police have the legal classification that allows them to respond fully both on and near the Arboretum's property to incidents of concern or actual threat, they will be best equipped to ensure the safety and well-being of Arboretum visitors, members, volunteers, staff and members of the community.

These changes would align Arboretum officers with the normal authority held by law enforcement agencies on UNC campuses, and would meet the following objectives:

- With reclassification officers would have all the powers of North Carolina law enforcement officers generally. The requested reclassification would allow territorial jurisdiction of all property owned or leased to the institution and that portion of any public road or highway immediately adjoining it wherever located.

- To define an officer of The North Carolina Arboretum, without question, as an employee of the State. This clarification is important in qualifying Arboretum officers for the increased protections afforded an officer of the State.

- To allow North Carolina Arboretum officers:

    - to have jurisdiction if their assistance is required by a state, county, or municipal law enforcement officer off the premises of The North Carolina Arboretum.

    - the one mile extra-territorial jurisdiction given to municipal police officers

    - to make an arrest with an outstanding warrant on a public road or highway immediately adjoining the Arboretum property and make an arrest or charge for observed infractions on public roads adjacent to the North Carolina Arboretum.

    - To allow a North Carolina Arboretum officer to carry a concealed weapon on and off duty. (N.C.G.S. 14-269(b)(4)

2007 NON-BUDGET LEGISLATIVE PROPOSAL FORM

Institution: The N.C. Arboretum
Arboretum Director's Priority: High

Date: August 23, 2006

Proposal (short title): Reclassification of N.C. Arboretum Special Police to N.C. Arboretum Campus Police

Campus Contact: George Briggs
Phone and Email: 828-665-2492; gbriggs@hotmail.com

DESCRIPTION OF PROPOSAL

- The reclassification of the law enforcement entity designated currently as The North Carolina Arboretum Special Police Department to The North Carolina Arboretum Campus Police Department, along with appropriate accompanying statutory amendments to provide appropriate authority and jurisdiction.

RATIONALE FOR PROPOSAL

This action would provide authority and jurisdiction commensurate with expanded property and visitor characteristics, facilitate perimeter patrol and security of adjacent Arboretum property, and allow interagency agreements with several enforcement agencies whose authority interfaces with the Arboretum. These changes would align Arboretum officers with the normal authority held by law enforcement agencies on UNC campuses, and would meet the following objectives:

- With reclassification of the Arboretum's department as a campus law enforcement agency, officers would have all the powers of North Carolina law enforcement officers generally. The requested reclassification would allow territorial jurisdiction of all property owned or leased to the institution and that portion of any public road or highway immediately adjoining it wherever located.

- Allow The North Carolina Arboretum to enter into mutual aid agreements to expand the territorial jurisdiction of its officers. (N.C.G.S. 160A-288) This would enable Arboretum police to do the following: 1. Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted; 2. Enter into joint agreements with the governing board of any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted; 3. Enter into joint agreements with the governing board of any other constituent institution of the University of North Carolina to extend the law enforcement authority of its campus police officers into any or all of the institution's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

- To allow North Carolina Arboretum officers outside of their territorial jurisdiction to have jurisdiction if their assistance is required by a state, county, or municipal law enforcement officer off the premises of The North Carolina Arboretum. Currently, officers of the North Carolina Arboretum can respond only as private citizens to affect an arrest or prevent the escape of a person from custody unless the officer, acting as a citizen knows the arrest is invalid per N.C.G.S.15A-405.

- To allow, as appropriate, the one mile extra-territorial jurisdiction given to municipal police officers by N.C.G.S. 15A-402 and N.C.G.S. 160A-286.

- To allow a North Carolina Arboretum officer to make an arrest with an outstanding warrant on a public road or highway immediately adjoining the Arboretum property.

- To allow a North Carolina Arboretum officer to make an arrest or charge for observed infractions on public roads adjacent to the North Carolina Arboretum.

- To define an officer of The North Carolina Arboretum, without question, as an employee of the State. (N.C.G.S 14-33(c)(4) This clarification is important in qualifying Arboretum officers for the increased protections afforded an officer of the State.

- To allow The North Carolina Arboretum officers to make an arrest while "off-duty" on their employer's premises. Currently a Company Police Officer would act as a private citizen on his/her employer's premises while "off-duty" per N.C.G.S. 15A-404.

- To allow a North Carolina Arboretum officer to carry a concealed weapon on and off duty. (N.C.G.S. 14-269(b)(4)

RELEVENT BACKGROUND INFORMATION

- The Arboretum is 434 acres located in the 6,300 acres of the Bent Creek Experimental Forest of Pisgah National Forest, adjoining the Blue Ridge Parkway.

- The North Carolina Arboretum now manages over 250,000 visitors per year, with growth occurring at an average growth rate of 10% rate annually. The Arboretum anticipates this number to grow to 750,000 during the next 10 years. The audience composition now includes 7,000 members, thousands of children and students, and about 500 community and corporate groups per year.

- The Bent Creek Experimental Forest will see approximately 650,000 to 1,000,000 visitors annually and provides a recreation area for camping, fishing, mountain biking, hiking and research.

- The Blue Ridge Parkway provides a scenic byway of approximately 500 miles through North Carolina and Virginia. Officials of the Blue Ridge Parkway estimate that 3.4 million visitors annually use the parkway near Asheville and the Arboretum.

- The Arboretum receives law enforcement assistance from Buncombe County Sheriff's Department, North Carolina State Highway Patrol, United States Marshall, Blue Ridge Parkway enforcement, North Carolina Wildlife law enforcement, and United States Forest Service law enforcement. Medical assistance comes from Skyland Fire Department and Buncombe Emergency Medical Services. Under Company Police restrictions the department is unable to respond to or with these departments beyond the Arboretum's property line, unless on request as a private citizen.

- The Arboretum is located in a unique and somewhat remote area of Buncombe County referred to as "urban interface," i.e. forest lands adjacent to encroaching urban areas where criminal activity tends to concentrate. The response time for back-up assistance to Arboretum officers from adjoining law enforcement agencies may be as long as 20 minutes.

- Due to The North Carolina Arboretum's unique location, internal law enforcement response time to external incidents, upon observation or request, would be advantageous in a critical situation. If Arboretum police have the legal classification that allows them to respond fully both on and near the Arboretum's property to incidents of concern or actual threat, they will be best equipped to ensure the safety and well-being of Arboretum visitors, members, volunteers, staff and members of the community. Arboretum officers now require a reasonable standard of care, as provided with campus police law enforcement authority and jurisdiction, for the hundreds of thousands of visitors who come here annually.

- All adjoining law enforcement agencies with whom Arboretum officers interact support this change.

POLITICAL ANALYSIS, INCLUDING THIRD PARTIES WITH AN INTEREST

- Buncombe County Sheriff's Department
- Blue Ridge Parkway Law Enforcement
- North Carolina Wildlife Law Enforcement
- United States Forest Service Law Enforcement
- Skyland Fire Department
- The North Carolina Arboretum Society
- The North Carolina Biotechnology Center
- UNC-Asheville
- Western Carolina University
- NC State University
- Area recreational interest groups and users
- Cradle of Forestry Interpretive Association

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PREVIOUS ATTEMPTS TO RESOLVE ADMINISTRATIVELY

- In previous years the Arboretum has employed multiple strategies to provide adequate public safety services and protection with a small department and a formative institution. Additionally, the strict territorial jurisdiction limitations of the Company Police Program have increasingly impeded the ability of Arboretum officers to carry out reasonable, necessary and expected procedures that are appropriate for the Arboretum's current circumstances.

STATUTORY REFERENCES

- N.C.G.S. 74-E The Company Police Act
- N.C. Administrative Code Title 12, Chapter 21-Rules Governing Company Police
- N.C.G.S. 116-40.5
- Chapter 17C
- N.C.G.S. 14-33(c)(4)
- N.C.G.S. 14-34.5
- N.C.G.S. 14-269(b)(4)
- N.C.G.S 15-405
- N.C.G.S. 15-404
- N.C.G.S. 160A-288
- N.C.G.S. 15A-502
- N.C.G.S. 160A-286

UNIVERSITY-WIDE PRIORITY SUPPORTED

Safe and secure access to high quality University public service.

CONTACT INFORMATION FOR STAKEHOLDERS

George Briggs, Executive Director
The North Carolina Arboretum
100 Frederick Law Olmsted Way
Asheville, NC 28806-9315

Campus Police Status for NC Arboretum

Summary

- These changes would align Arboretum officers with the normal authority held by law enforcement agencies on UNC campuses.

Questions

What kind of authority would be given to Arboretum officers?

With reclassification, officers would have all the powers of North Carolina law enforcement officers generally. Some of those powers include:

- Territorial jurisdiction of all property owned or leased to the institution and that portion of any public road or highway immediately adjoining it wherever located.
- General arrest authority
- Authority to charge/arrest for observed infractions on public roads adjacent to the property
- Define an officer of the Arboretum, without questions, as an employee of the State. This clarification is important in qualifying Arboretum officers for the increased protections afforded an officer of the state.
- Ability to carry a concealed weapon on and off duty.

What are the advantages to making this change?

Even though Arboretum officers receive training and have the needed credentials of a Criminal Justice officer, currently they can not step off the Arboretum property to assist a sister agency or enforce a serious violation of the law due to their certifications. Due to its location in the state, sister agencies rely on each other when response time is an issue. Currently, the response time for back-up assistance may be as long as 20 minutes.

If Arboretum police have the legal classification that allows them to respond fully both on and near the Arboretum's property to incidents of concern or actual threats, they will be best equipped to ensure the safety and well-being of Arboretum visitors, members, volunteers, staff and members of the community.

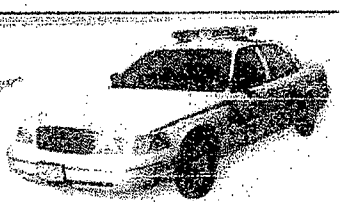
Are local law enforcement agencies supportive?

Local law enforcement agencies are very supportive. We have received the endorsement from 10 local agencies including:

- Buncombe County Sheriff's office
- State Highway Patrol
- National Park Service
- Forest Service
- Skyland Fire Department
- City of Asheville
- North Carolina Wildlife Resources Commission

SHERIFF

BOBBY L. MEDFORD BUNCOMBE COUNTY, NORTH CAROLINA



September 15, 2006

Mr. George Briggs
CEO, The Arboretum of North Carolina
100 Frederick Law Olmstead Ways
Asheville, N.C. 28806

Dear Mr. Briggs:

The intent of this letter is to offer our full support in the change of status of your Public Safety Department to a Campus Police Agency. I am confident that this change would benefit the Buncombe County Sheriff's Department as well as the citizen's who live in close proximity to the Arboretum property.

We are proud of the working relationship that has been established between our agencies. Chief Mike Lindsey and his staff are dedicated law enforcement officers who strive to project a positive image of the law enforcement profession.

Please let me know if I can assist in the change in certification status for your Public Safety Department.

Respectfully,

Major Pat Hefner

SHERIFF

BOBBY L. MEDFORD

BUNCOMBE COUNTY, NORTH CAROLINA



January 31, 2006

Mr. George Briggs
CEO, The Arboretum of North Carolina
100 Frederick Law Olmstead Ways
Asheville, N.C. 28806

Dear Mr. Briggs,

Today I met with Chief Mike Lindsey of your Public Safety Department to discuss our arrangements for mutual aid. Mike brought to my attention that his agency is certified as a "Company Police Agency" and not a "Public Law Enforcement Agency" such as campus police. Certainly we immediately respond to their requests for our assistance, and will continue to do so regardless of their certification.

The status of your agency being changed to a campus police agency or similar organization would be a service to our department as well as to the immediate community contiguous with the Arboretum. Mike and his staff have always been helpful anytime we requested their assistance and I am sure this will continue regardless. Such a change would seem to me to be a better circumstance as it pertains to liability for your staff.

Should you decide that a change in certification status for your Public Safety Department is appropriate, please let me know if we may be of assistance.

Sincerely,

Captain Lee Farnsworth
Director of Operations

202 HAYWOOD STREET · ASHEVILLE, NORTH CAROLINA 28801 · (828)255-5000 · FAX (828)255-5568

Michael F. Easley
Governor
Bryan E. Beatty
Secretary
W. Fletcher Clay
Colonel

Location:
512 N. Salisbury Street
Raleigh, NC
(919) 733-7952

Mailing Address:
4702 Mail Service Center
Raleigh, NC
27699-4702

The mission of the North Carolina State Highway Patrol is to ensure safe, efficient transportation on our streets and highways, reduce crime, protect against terrorism, and respond to natural and manmade disasters. This mission will be accomplished in partnership with all levels of government and the public, through quality law enforcement services and education based upon high ethical, professional, and legal standards.

An internationally accredited agency

North Carolina Department of Crime Control & Public Safety

Division of State Highway Patrol

Troop G Headquarters
600 Tunnel Road
Asheville, North Carolina 28805

13 September 2006

Mr. George Briggs
CEO Arboretum of North Carolina
100 Frederick Law Olmstead Way
Asheville, NC 28806

Dear Mr. Briggs:

As a part of the public safety community in Buncombe County area, I am writing to you in support of a recent proposal to re-classify public safety officers stationed at the North Carolina Arboretum from "Company Police Officers" to "Public Law Enforcement Officers".

The primary function of the North Carolina Highway Patrol is to ensure safe and efficient travel on our roadways. The Patrol is occasionally forced to detour traffic from Interstate 26 onto NC-191. It is during these times that traffic becomes overwhelming and normal access to the Arboretum is greatly reduced if not totally restricted. There are many times that your officers are the first one the scene at a traffic collision that occurs on NC 191 near the Blue Ridge Parkway. The problem is that your officers are classified as company police and therefore have no authority to direct traffic on NC 191. Due to lack of sufficient personnel with the Highway Patrol in Buncombe County it may take a trooper 30 minutes or more to get to the scene of the collision to render aid and direct traffic. It would be a great help if officers at the Arboretum had authority to assist prior to the arrival of the trooper.

If allowed to enhance their enforcement responsibilities, Arboretum Officers would be allowed the opportunity to take a more proactive role in traffic direction and could provide an enhanced service to Arboretum visitors, staff and the motoring public.

I am in favor of legislative or other changes that would increase the jurisdictional authority of your officers. It makes no sense in these days of terrorists threats that your authority not be expanded as the role of all law enforcement is more critical than it has ever been in our State. I support your endeavor to re-classify the TNCA Special Police to Public Law Enforcement.

I appreciate the great working relationship that your officers have with our troopers. If the Patrol can ever be of assistance to you please do not hesitate to contact me.

Sincerely,

Captain M. T. James
Troop G Commander
North Carolina State Highway Patrol

THE UNIVERSITY OF NORTH CAROLINA
ASHEVILLE

NORTH CAROLINA'S PUBLIC LIBERAL ARTS UNIVERSITY

September 28, 2006

Mr. George Briggs
CEO, The Aboretum of North Carolina
100 Frederick Law Olmstead Ways
Asheville, NC 28806

Dear Mr. Briggs:

Previously I have had conversation with Chief Lindsey in regards to the Arboretum's current classification within the Company Police Act. This classification clearly places limitations upon the agency which are growing more unacceptable as each day passes in today's society. It is only human nature for officers employed with surrounding agencies to be most willing to assist those that on occasion have the legal authority to return that favor during potentially dangerous situations. A statement of this nature is not intended to cast blame or point fingers at any person(s) or department(s).

Reclassification within the Campus Police Act is most imperative because it allows Arboretum officers to render assistance with full powers as needed to federal and local police. As a result, it is my experience that good working relationships then become great working relationships. These relationships are most critical for small agencies such as UNC-Asheville or the Aboretum, where current staffing levels quite often mean that only one officer is on duty for an entire shift.

I certainly trust legislators to take this proposal seriously and encourage you to contact me should there be any way in which I can be of further assistance.

Sincerely,

Steve Lewis
Chief of Police
UNC-Asheville
One University Heights
Asheville, NC 28804
828/251-6710
828/251-6954 (FAX)

Cc: Chief Mike Lindsey

United States Department of the Interior

NATIONAL PARK SERVICE
Blue Ridge Parkway
Pisgah District
51 Ranger Drive
Asheville, North Carolina 28805

IN REPLY REFER TO:

August 22, 2006

George Briggs
CEO Arboretum of North Carolina
100 Frederick Law Olmstead Way
Asheville, NC 28806

Dear Mr. Briggs,

I understand law enforcement personnel stationed at the Arboretum are seeking to enhance their law enforcement authority to better assist them in the performance of their duties. I would like to express our support and recommend campus police designation. There have been numerous occasions when Arboretum law enforcement officers have been requested to respond to incidents on the Blue Ridge Parkway, a unit of the National Park Service, and have assisted in many different types of emergencies. Their actions have saved our rangers valuable time and provided extra security and safety during emergencies and stressful situations. We are thankful to have such a tremendous relationship with the staff at the Arboretum and always enjoy our interactions. Arboretum Police Chief Mike Lindsay is a pleasure to work with, as is the rest of the staff, all of who exhibit a high degree of professionalism.

We hope their efforts are successful and as always, look forward to working with them soon.

Sincerely,

Tim Francis
Pisgah District Ranger
Blue Ridge Parkway

United States Department of Agriculture | Forest Service | Law Enforcement & Investigations Central Zone | Pisgah Ranger District
1001 Pisgah Highway
Pisgah Forest, NC 28768
(828)-877-3265 ext 231

File Code: 5300

Date: 08/31/05

Re: Mutual Aid

Mr. George Briggs
100 Frederick Law Olmstead Way
Asheville, NC 28806

I am writing this notice on behalf the Public Safety Officers of the North Carolina Arboretum. I have been stationed on the Pisgah National Forest for a little over ten years with full range Law Enforcement Duties on National Forest Lands. Those duties are to detect violations on Federally Owned Property that the U.S. Forest Service may have interest in. It has been a comfort to me and those that manage the Lake Powhatan Campground, a National Forest Facility, to have Law Enforcement readily available to respond to issues that arise in a timely manner. There are many instances where the rapid response of these Officers has avoided some serious consequences to visitors. On most occasions, I work solo; I know that when I am in the Bent Creek Area near the Arboretum, there are Officers for back up situations which is a welcomed relief. In an emergency, my drive time from the Ranger Station in Pisgah Forest is around 25 minutes. In most cases, Arboretum Officers are on the scene within five minutes to give aid to injuries or assist in enforcement of State Law on National Forest. The relationship to Law Enforcement and Investigations of the USDA Forest Service is priceless.

Sincerely:

Lee Boyd
Forest Officer

Skyland Fire Department
Office of the Fire Chief
Dennis L. Presley

P.O. BOX 640 • 9 MILLER ROAD • SKYLAND, NC 28776 • TELEPHONE 828-684-6421 • Fax 828-684-1010

Mr. George Briggs
CEO, the Arboretum of North Carolina
100 Frederick Law Olmstead Way
Asheville, N.C. 28806

August 22, 2006

Dear Mr. Briggs,

Today I am writing in support of the Arboretum becoming a University Campus Police Agency. As this area grows and becomes more populated comes with it more visitors to the Arboretum. More often now the need for us to respond to all types of situations arises and some of which needs the attention of a Certified Law Enforcement Agency. We have responded with Chief Mike Lindsey and his officers for many situations and enjoy working with a good group of officers. Some of these responses being on property and some being off. The responses from your agency makes us feel safer knowing that the Arboretum Police is there with us or very close. Please consider this recommendation of a University Campus Police Agency at the Arboretum for our area and community members.

If I or the department can ever be of assistance please feel free to give a call anytime.

Dennis L. Presley, Chief

SKYLAND VOLUNTEER FIRE DEPARTMENT

INCORPORATED

P.O. BOX 640 • 9 MILLER ROAD • SKYLAND, NC 28776 • TELEPHONE 828-684-6421

To: George Briggs
CC: Michael Lindsay

Dear Mr. Briggs,

This letter is in reference to TNCA's Department of Public Safety. At their current level, they are only allowed to assist the Skyland Fire Department on calls that happen inside of TNCA property. They are a great asset during those calls because of their cross training in police, fire and EMS response.

However, if TNCA's Public Safety Department was not classified as Special Police but instead be Campus Police; they would be able to assist the Skyland Fire Department in calls both inside of TNCA and also within their one mile extra territorial jurisdiction.

The Skyland Fire Department gets multiple calls in Bent Creek, Brevard Road, and on The Blue Ridge Parkway. We receive calls for medical first responders, vehicle accidents, bicycle accidents, lost person searches, river rescues, etc. in this area. With TNCA's central location to this area, they will be able to respond to those calls and start the care of the patient in those first critical moments, and provide us with the information we need. Also with their knowledge of the area, they would be a great asset in working with search crews and getting patients out of the trails in the Bent Creek area.

TNCA's public safety department is very helpful when we are called to TNCA. As Campus Police, they will be able to assist The Skyland Fire Department in more areas and would help keep the Bent Creek area safe.

Thank you,

Michael Staton, Battalion Chief
Skyland Fire Department

City of Asheville, NC

Police Department

October 9, 2006

Mr. George Briggs
CEO Arboretum of North Carolina
100 Frederick Law Olmstead Way
Asheville, NC 28806

Mr. Briggs:

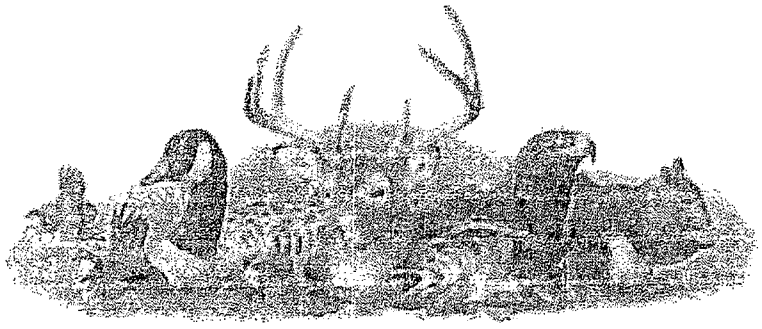
I am writing on behalf of the law enforcement personnel connected with the Arboretum of North Carolina who is seeking to enhance their law enforcement authority to better assist in the performance of their duties. I support their efforts toward being reclassified as a University Campus Police Agency per NCGS 116-40.5. This reclassification would be advantageous to the Arboretum, local jurisdictions and citizens using the area.

Sincerely,

William A. Hogan

William A. Hogan
Chief of Police

ghm



North Carolina Wildlife Resources Commission

Richard B. Hamilton, Executive Director

August 25, 2006

Mr. George Briggs
CEO, The Arboretum of North Carolina
100 Frederick Law Olmstead Ways
Asheville, N.C. 28806

Dear Mr. Briggs,

I spoke with Chief Mike Lindsay concerning our mutual aid arrangements. Being new to the District I found it concerning that even though your officers have received training and have the needed credentials of a Criminal Justice officer they can't step off the Arboretum property to assist a sister agency or enforce a serious violation of the law due to their certification. I greatly support the Chief's desire to have his unit certified as a Public Law Enforcement Agency.

We are a very small agency with only two officers stationed in Buncombe County. We confront all sorts of activities that at times require quick response. We often rely on sister agencies to assist when public safety issues when response time is an issue. The Arboretum's is located in an area near a high activity area that often requires attention from our officers. We would very much appreciate your consideration in this matter.

Sincerely.

Capt. G.S. Daniels
N.C.W.R.C.
Division of Enforcement

DIVISION OF ENFORCEMENT
Mailing Address: 1717 Mail Service Center • Raleigh, NC 27699-1717
Telephone: (919) 707-0030 • **Fax:** (919) 707-0045

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 6
PROPOSED COMMITTEE SUBSTITUTE S6-PCS55309-LB-2

Short Title: Early Organizational Session. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN EARLIER CONVENING OF THE GENERAL ASSEMBLY FOR A TWO-DAY ORGANIZATIONAL SESSION FOLLOWED BY AN EXTENDED RECESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at ~~12:00 noon~~ 10:00 A.M. on the ~~third Wednesday after the second Monday~~ second business day in January next after their ~~election~~.election, except if that day is a Friday, the session shall instead convene on Thursday, January 2. The Senate and House shall convene that day for a two-day session. When the Senate and House of Representatives adjourn on the second day, they stand adjourned until 12:00 noon on the third Wednesday thereafter."

SECTION 2. This act becomes effective January 1, 2009.

SENATE BILL 6:
Early Organizational Session

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	March 19, 2007
Introduced by:	Sen. Hoyle	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S6-PCS55309-LB-2		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 6 would provide for a two-day early organizational session of in each odd-numbered year.***

CURRENT LAW: Section 11 of Article II of the North Carolina Constitution provides that the General Assembly shall convene regular sessions on the day prescribed by law. Neither chamber may proceed upon public business unless a majority of its members are actually present. The General Assembly convenes in the odd-numbered years at 12:00 noon on the third Wednesday after the second Monday of January. G.S. 120-11.1.

Section 20 of Article II of the North Carolina Constitution provides that the two chambers may jointly adjourn to any future day or other place. Of its own motion, either chamber may adjourn for three days or less.

BILL ANALYSIS: The proposed committee substitute would add a two-day organizational session beginning the second business day in January of the odd-numbered years. If second business of January fell on a Friday, the two-day session would begin on the Thursday before that year.

Upon conclusion of the two-day early organizational session, the General Assembly would stand adjourned until 12:00 noon on the third Wednesday after the organizational session.

EFFECTIVE DATE: Effective January 1, 2009.

S0006e1-SMST-PCS55309-LB-2

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Tuesday, March 20, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **211** Electronic Signatures/Public Agencies.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **630** NC Arboretum Campus Police.
Draft Number: 75328
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 20, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Octavia Rainey	NC Fair Share
Lee Mandell	NCLM
Andy Willis	UNC
Erin Schuttpelz	UNC
Camille Kluttz-Leach	NCA&T / UNC
Henry M Lancaster	LCA/NCA
Hayes Holderness	NCCA
Jess MacDonald	Sen. Julia Boseman
Todd Barlow	NCATL
Robert Arnold	AOC
Bessie Gray	John Locke Foundation

SENATE JUDICIARY I COMMITTEE
(Civil)

March 22, 2007
10 a.m. –Room 1128

MINUTES

The Senate Judiciary Committee met Thursday, March 22, 2007 in Room 1128 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Sen. Charlie Albertson, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Malcolm Graham, Sen. Tony Rand and Sen. Jerry Tillman.

Sen. Nesbitt called the meeting to order at 10:07 a.m. and recognized Senate Page Christine Pruitt of Charlotte. Sen. Boseman was recognized to explain House Bill 42, the companion of Senate Bill 32. Sen. Boseman explained the two main points of the bill: that stalking would be an offense qualifying under the domestic violence bail and pretrial release statute and a requirement for the attorney general's office to establish and maintain a database for domestic violence homicide information.

Sen. Clodfelter asked if stalking is defined. Research attorney Hal Pell answered that stalking was a statutory offense. Sen. Clodfelter motioned for a favorable report. The motion carried unanimously.

Sen. Boseman remained recognized to explain House Bill 46, the companion of Senate Bill 29, ordering a study to be compiled by the North Carolina Council for Women/Domestic Violence Commission to investigate whether domestic violence shelters should adopt safety guidelines when receiving state funds. Sen. Nesbitt noted that this was a study and not a mandate for shelters, saying "this is just a study. In some counties they've got what they've got and that's better than nothing."

Sen. Clodfelter motioned for a favorable report, with the motion passing unanimously. Sen. Nesbitt said the committee would hold the Senate bill until the House bill passed.

Sen. Nesbitt moved discussion to Senate Bill 195, a bill that allows residents to register to vote at "one stop" absentee voting sites. Senate Bill 195 was discussed at the March 14 meeting, without action taken, and two visitors to the meeting, Rep. John Lesch of St. Paul, Minnesota and Regina Eaton, deputy program director of Demos.org praised the one-stop registration and voter concept for its success in Minnesota and other states.

Sen. Rand asked Rep. Lesch if the computerized registration was throughout Minnesota, which Rep. Lesch said varied from county to county. Sen. Brunstetter asked about showing identification to vote. Rep. Lesch answered that a state ID and proof of residence were used. Sen. Tillman asked about fraud among Minnesota voters and Rep. Lesch answered that fraud was minimal.

Sen. Nesbitt recognized Ms. Eden who said that several other states currently had similar bills and that there was an average six to ten percent increase in voting in state that already had similar one-stop sites in place.

The third bill on the agenda, **Senate Bill 124**, which would allow local governments to regulate smoking in public places, was not discussed.

Sen. Nesbitt moved to the last bill on the agenda, **Senate Bill 125**, sponsored by Sen. Steve Goss. **Senate Bill 125** would amend the existing Toxic Vapors Act to include ethyl alcohol as an unlawful substance for purposes of intoxication and unlawful to possess an alcohol vaporizing device.

Sen. Goss said he "believed the machine (alcohol vaporizing device) is dangerous" and that there was a "great potential for abuse."

Sen. Tillman asked if there were criminal penalties for violating the proposed law. Staff replied that it was a C1 misdemeanor.

Sen. Rand motioned for a favorable report. Sen. Nesbitt asked for public comments.

Mike Creech of the Christian Action League said that 21 states have already banned the devices but that they are marketed through a company located in Greensboro. There was no other public comment.

Sen. Clodfelter asked if the bill could outlaw manufacturing. Sen. Nesbitt replied that with the word "possess" in the bill manufacturing the device would automatically be illegal.

Senate bill 125 received an unfavorable report as the original bill; after a motion by Sen. Rand the bill received a favorable report to a Committee Substitute and is referred by Sen. Nesbitt to the Committee on Commerce.

The meeting adjourned at 10:30 a.m.

HB 42/SB 32, Analysis for HB 42, HB 46,analysis for HB 46, SB 195, Analysis for SB 195, SB 124, SB 125, *and the Committee Substitute for* ***SB 125 and the Analysis for SB 125*** *are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, and 9 respectively.*

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 42*

Committee Substitute Favorable 3/6/07

Short Title: Amend DV Laws/Homicide Reporting. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND CRIMINAL PROCEDURE LAWS AFFECTING DOMESTIC VIOLENCE VICTIMS AND TO REQUIRE DOMESTIC VIOLENCE HOMICIDE REPORTING AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534.1 reads as rewritten:

"**§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.**

(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

(1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A judge may impose the following conditions on pretrial release:

a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;

b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;

c. That the defendant refrain from removing, damaging or injuring specifically identified property;

d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

(3) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

(b) A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section."

SECTION 2. The Attorney General's Office, in consultation with the North Carolina Council for Women/Domestic Violence Commission, the North Carolina Sheriffs' Association, and the North Carolina Association of Chiefs of Police, shall develop a reporting system and database that reflects the number of homicides in the State where the offender and the victim had a personal relationship, as defined by G.S. 50B-1(b). The information in the database shall also include the type of personal relationship that existed between the offender and the victim, whether the victim had obtained an order pursuant to G.S. 50B-3, and whether there was a pending charge for which the offender was on pretrial release pursuant to G.S. 15A-534.1. All State and local law enforcement agencies shall report information to the Attorney General's Office upon making a determination that a homicide meets the reporting system's criteria. The report shall be made in the format adopted by the Attorney General's Office. The Attorney General's Office shall begin collecting data required by this act for offenses occurring on or after July 1, 2007. The Attorney General's Office shall report to the Joint Legislative Committee on Domestic Violence, no later than February 1 of each year, with the data collected for the previous calendar year.

SECTION 3. Section 1 of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 32*

Short Title: Amend DV Laws/Homicide Reporting. (Public)

Sponsors: Senators Boseman; Atwater, Cowell, Goodall, and Snow.

Referred to: Judiciary 1 (Civil).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND CRIMINAL PROCEDURE LAWS AFFECTING DOMESTIC VIOLENCE VICTIMS AND TO REQUIRE DOMESTIC VIOLENCE HOMICIDE REPORTING AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-401(b)(2) reads as rewritten:

"(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), ~~or 14-34~~ 14-34, 14-277.1, or 14-277.3 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or

e. Has committed a misdemeanor under G.S. 50B-4.1(a); or

f. Has violated a pretrial release order entered under G.S. 15A-534.1(a)(2)."

SECTION 2. G.S. 15A-534.1 reads as rewritten:

"**§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.**

(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with

whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

(1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A judge may impose the following conditions on pretrial release:

a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;

b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;

c. That the defendant refrain from removing, damaging or injuring specifically identified property;

d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

(3) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

(b) A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section."

SECTION 3. The Attorney General's Office, in consultation with the North Carolina Council for Women/Domestic Violence Commission, the North Carolina Sheriffs' Association, and the North Carolina Association of Chiefs of Police, shall develop a reporting system and database that reflects the number of homicides in the state where the offender and the victim had a personal relationship, as defined by G.S. 50B-1(b). The information in the database shall also include whether the victim had obtained an order pursuant to G.S. 50B-3 and whether the offender was on pretrial release pursuant to G.S. 15A-534.1. All State and local law enforcement agencies shall report information to the Attorney General's Office upon making a determination that a homicide meets the reporting system's criteria. The report shall be made in the format adopted by the Attorney General's Office. The Attorney General's Office shall begin

collecting data required by this act for offenses occurring on or after July 1, 2007. The Attorney General's Office shall report to the Joint Legislative Committee on Domestic Violence, no later than February 1 of each year, with the data collected for the previous calendar year.

SECTION 4. Sections 1 and 2 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 42:
Amend DV Laws/Homicide Reporting

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 20, 2007
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield, Jeffus	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	Second Edition		

SUMMARY: ***This act would include stalking as an offense qualifying under the domestic violence bail and pretrial release statute, and would establish a database for the collection of domestic violence homicide information.***

[As introduced, this bill was a recommendation of the Joint Legislative Committee on Domestic Violence, and was identical to S32, as introduced by Sen. Boseman. The bill was amended in the House to remove a provision which would have added two offenses to the statutory list of offenses where warrantless arrest with probable cause is allowed: stalking against, or communicating a threat to, a person with whom the defendant had a personal relationship].

CURRENT LAW: If a defendant is brought before a judge for consideration for pretrial release, and has been

- charged with violation of a domestic violence protective order;
- charged with domestic criminal trespass; or
- charged with assault, communicating a threat, or a felony described in the statute, against (1) a spouse or former spouse, or (2) a person with whom the defendant lives or has lived with as if married,

then the judge may retain a defendant in custody for a reasonable period of time if

(1) the judge determines that the immediate release of the defendant will pose a danger of injury or result in intimidation to the victim, and

(2) the execution of an appearance bond will not insure that the injury or intimidation will not occur. The court may also impose the conditions of pretrial release listed in the statute.

BILL ANALYSIS:

Section 1: The act would add "stalking" to the offenses qualifying for use of the domestic violence pretrial release statute.

(over)

Section 2: Requires the Attorney General's Office to develop a State-wide data collection and reporting system for homicides where there is a personal relationship between the defendant and the victim. The database would include

- the type of relationship between the defendant and the victim,
- whether a domestic violence protective order had been obtained by the victim, and
- whether the defendant was on pretrial release.

The Attorney General's Office would report to the Joint Legislative Committee on Domestic Violence no later than February 1st with the previous year's data.

EFFECTIVE DATE: Section 1 would be effective for offenses committed on or after Dec. 1, 2007. Section 2 would be effective when the act becomes law.

H0042e2-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H **2**

HOUSE BILL 46*
Committee Substitute Favorable 3/5/07

Short Title: DV Victims/Security. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO DETERMINE WHETHER SECURITY GUIDELINES ARE NEEDED FOR DOMESTIC VIOLENCE SHELTERS OPERATED BY STATE-FUNDED AGENCIES AND TO PROVIDE, WHERE FEASIBLE, SECURE AREAS FOR DOMESTIC VIOLENCE VICTIMS TO AWAIT HEARING OF THEIR COURT CASE AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Council for Women/Domestic Violence Commission (Council), in cooperation with the North Carolina Coalition Against Domestic Violence, shall review the guidelines that agencies must meet in order to receive State funds through the Council. The Council shall consider whether there should be specific guidelines designed to ensure safety at domestic violence shelters that are operated by State-funded agencies.

The Council shall report to the Joint Legislative Committee on Domestic Violence no later than May 1, 2008, on the results of the review.

SECTION 2. Where practical, upon request of a domestic violence victim, the clerk of Superior Court of any county shall coordinate with the county Sheriff to make available to the victim a secure area, segregated from the general population of the courtroom, to await hearing of their court case. The Clerk shall notify the presiding judge on the date of the hearing that the victim is present in a segregated location.

The Administrative Office of the Courts shall report to the Joint Legislative Committee on Domestic Violence no later than May 1, 2008, on the progress of providing the space in each courthouse.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 46: DV Victims/Security

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	March 21, 2007
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield, Pierce	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	Second Edition		

SUMMARY: ***This act would require the North Carolina Council for Women/Domestic Violence Commission to consider whether State-funded agencies that operate DV shelters should adopt safety guidelines as a criterion for receipt of State funds. The act also requires that the clerk of any Superior Court, where practical, to make a secure area available to a domestic violence victim that is waiting on a hearing of their case.***

[As introduced, this bill was a recommendation of the Joint Legislative Committee on Domestic Violence and was identical to S29, as introduced by Sen. Boseman, which is currently in this committee. Section 2 was amended with clarifying language, and a requirement that the clerk notify the judge that the victim is present in a separate area].

CURRENT LAW: The Domestic Violence Center Fund is a State fund administered by the North Carolina Council for Women (Council). It is used to make grants to centers for victims of domestic violence and to The North Carolina Coalition Against Domestic Violence, Inc. (NCCADV). Quarterly grants are made to eligible domestic violence centers in an equal amount. To be eligible, a domestic violence center must meet the following requirements:

(1) In operation on the preceding July 1 and shall continue to be in operation.

(2) Offers all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night and shall fulfill other criteria established by the Department of Administration.

(3) It shall be a nonprofit corporation or a local governmental entity.

BILL ANALYSIS:

Section 1: Requires the Council, in cooperation with the NCCADV, to review guidelines that agencies must meet in order to receive State funds. Specifically, the Council must consider whether there should be specific guidelines designed to ensure safety at domestic violence shelters. The Council is required to report to the Joint Legislative Committee on Domestic Violence no later than May 1, 2008, on the review results.

Section 2: The clerks of the Superior Courts would, where practical and if requested, coordinate with the sheriff to provide domestic violence victims with a secure area—one that is separated from the courtroom's general population. The Clerk would be required to notify the judge on the hearing date that the victim is present, and in a segregated area.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 195*

Short Title:	Registration and Voting at One-Stop Sites.	(Public)
Sponsors:	Senators Shaw; Atwater, Berger of Franklin, Clodfelter, Cowell, Dorsett, and Foriest.	
Referred to:	Judiciary 1 (Civil).	

February 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IN-PERSON REGISTRATION AND VOTING AT ONE-STOP ABSENTEE VOTING SITES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.6A. In-person registration and voting at one-stop sites.**

(a) Who May Register in Person. – In accordance with the provisions in this section, an individual who is qualified to register to vote may register in person and then vote at a one-stop voting site in the person's county of residence during the period for one-stop voting provided under G.S. 163-227.2. For purposes of this section, a one-stop voting site includes the county board of elections office, if that office is used for one-stop voting.

(b) Documentation and Sworn Statement Required. – To register and vote under this section, the person shall provide proof of residence, complete a registration form as prescribed in G.S. 163-82.4, and sign a statement under penalty of perjury that the person is a citizen of the United States and resides at the address given. The presentation of any of the following valid documents that show the person's name and current address is required as proof of residence: a North Carolina drivers license, photo identification from a government agency, utility bill, bank statement, paycheck, government check, or other government document. The State Board of Elections may designate additional documents or methods that suffice and shall prescribe procedures for establishing proof of residence.

(c) Voting With Retrievable Ballot. – A person who registers under this section shall vote a retrievable absentee ballot as provided in G.S. 163-227.2 immediately after registering. If a person declines to vote immediately, the registration shall be processed, and the person may later vote at a one-stop voting site under this section in the same election.

(d) Verification of Registration; Counting of Ballot. – Within two business days of the person's registration under this section, the county board of elections in conjunction with the State Board of Elections shall verify the North Carolina drivers license or Social Security number in accordance with G.S. 163-82.12, update the statewide registration database and search for possible duplicate registrations, and proceed under G.S. 163-82.7 to verify the person's address. The person's vote shall be counted unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter.

(e) Change of Registration at One-Stop Voting Site. – A person who is already registered to vote in the county may update the information in the registration record in accordance with procedures prescribed by the State Board of Elections, but an individual's party affiliation may not be changed during the one-stop voting period before any first or second partisan primary in which the individual is eligible to vote."

SECTION 2. G.S. 163-82.6(c), (d), and (e) read as rewritten:

"**§ 163-82.6. Acceptance of voter registration application forms.**

(c) Registration Deadlines for an Election. – In order to be valid for an election, except as provided in G.S. 163-82.6A, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election, except as provided in subsection (d) of this section.

(d) Instances When Person May Register and Vote ~~on Election Day.~~ After the Standard Registration Deadline. – If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register and vote at a one-stop site as provided in G.S. 163-82.6A, or may apply to register on election day by submitting an application form described in G.S. 163-82.3 (a) or (b) to:

(1) A member of the county board of elections;

(2) The county director of elections; or

(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may

require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election day applications to register. No person shall be permitted to register on the day of a second primary unless ~~he shall have become~~ the person becomes qualified to register and vote between the date of the first primary and the date of the succeeding second primary and was not qualified to register and vote in the first primary.

(e) For purposes of subsection (d) of this section, persons who "become qualified to register and vote" during a time ~~period:~~period

~~(1)~~ ~~Include~~ include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony~~; but~~

~~(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period.~~"

SECTION 3. G.S. 163-227.2(a) reads as rewritten:

"(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request an application for absentee ballots, complete the application, and vote under the provisions of this ~~section.~~section and of G.S. 163-82.6A, as applicable."

SECTION 4. The State Board of Elections shall monitor the implementation of this act and determine the feasibility and timetable for expanding same-day registration and voting to all voting places on Election Day. The State Board shall report its findings no later than March 1, 2008, to the Joint Legislative Commission on Governmental Operations of the General Assembly.

SECTION 5. Sections 1, 2, and 3 of this act become effective July 1, 2007, and shall apply to all primaries and elections held on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 195:
Registration and Voting at One-Stop Sites

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	February 27, 2007
Introduced by:	Sen. Shaw	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Counsel

SUMMARY: The First Edition of Senate Bill 195 would allow people both to register and to vote at one-stop (early voting) sites.

[As introduced, this bill was identical to H91, as introduced by Reps. Ross, Holliman, Parmon, Tolson, which is currently in House Election Law and Campaign Finance Reform.]

CURRENT LAW: The basic current law is that voters may not vote in an election unless they have registered 25 days before election day. Exceptions are narrow:

- For persons who have become qualified after the deadline by naturalization or restoration to citizenship after serving a felony sentence. They may register on election day only.
- For people who may register and vote by absentee ballot because of their overseas or military status.

One-stop absentee voting, popularly called "early voting," begins on the third Thursday before an election and ends the Saturday before the election. One-stop begins six days after the standard close of registration.

BILL ANALYSIS: SB 195 would allow anyone who is qualified to vote to register and vote at a one-stop site. In order to vote, the person would have to do the following:

- Provide "proof of residence," which could be one of several documents that had the person's name and current address: a NC drivers license, a photo I.D. from a government agency, a utility bill, bank statement, paycheck, government check, or other government document. (That is roughly the list of I.D.s that satisfy the federal I.D. requirement for certain first-time voters, except that in this bill a current address is required for any of the I.D.s.)
- Complete the standard voter registration form.
- Sign a statement under penalty of perjury that they are a U.S. citizen and reside at the address given.

Once registered at the one-stop site, the person may vote right then. They will vote a retrievable ballot, as do other one-stop voters. If the newly registered person did not want to vote right then, they could come back later and vote, but only at a one-stop site – not by mail absentee and not at the polls on election day.

Within 2 business days after the person has registered at the one-stop site, the board of elections must proceed to verify the person's identity and address. The person's one-stop ballot must be counted unless the board determines that the applicant is not qualified to vote it.

A person already registered may update information on their records at the one-stop site, except that they cannot change party registration before a primary.

Sections 2 and 3 of the bill are cleanup sections. Section 4 requires the State Board of Elections to monitor the implementation of the act and report if and when it is feasible to allow people to register and vote on election day.

EFFECTIVE DATE: The first 3 sections would become effective July 1, 2007, the rest immediately.

BACKGROUND: Seven states allow voter registration on election day. When the forerunner of this bill was introduced in NC, it also called for election day registration. After doubts arose that voters' residences could be verified in time for canvass, one-stop registration was offered as a compromise.

S0195e1-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 124

Short Title:	Local Government Regulation of Smoking.	(Public)
Sponsors:	Senators Rand; Boseman and Jones.	
Referred to:	Judiciary l (Civil).	

February 13, 2007

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LOCAL GOVERNMENTS TO ADOPT LAWS, RULES, OR ORDINANCES REGULATING SMOKING IN PUBLIC PLACES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-601 is repealed.

SECTION 2. Article 64 of Chapter 143 of the General Statutes is amended by adding the following new section to read:

"**§ 143-602. Local governments may regulate smoking in public places.**

Notwithstanding any other provision of this Article to the contrary, a local government may adopt an ordinance, law, or rule regulating smoking in public places."

SECTION 3. This act is effective when it becomes law.

Attachment 9

SENATE BILL 124:
Local Government Regulation of Smoking

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 21, 2007
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 124 would allow local governments to adopt ordinances regulating smoking in public places.

[As introduced, this bill was identical to H347, as introduced by Reps. Alexander, Glazier, Adams, Justice, which is currently in House Judiciary I.]

CURRENT LAW: Article 64 of Chapter 143 the General Statutes addresses smoking in public places by providing for designated smoking and nonsmoking areas within buildings owned, leased or occupied by State government. A list of buildings owned, leased or occupied by state government which may be designated as nonsmoking areas is set forth, including: museums, libraries, and UNC health services facilities. Nonsmoking areas must be visibly posted as such, and requirements for separate ventilation systems and physical barriers between nonsmoking and adjacent smoking areas are provided for in the statute.

An itemized list of facilities specifically exempted from regulation by the provisions of Article 64 includes the following: any primary or secondary school, child care center (teacher's lounge excepted), enclosed elevators, public school buses, hospitals, nursing homes, rest homes, local health departments, organizations intended to discourage tobacco use, and tobacco manufacturing, processing and administrative facilities.

Local ordinances, laws or rules passed on or after October 15, 1993, regulating smoking may not contain restrictions exceeding those of Article 64 and may address smoking only in the following types of facilities:

- Buildings owned, leased, or occupied by local government.
- A public meeting.
- A library or museum open to the public.
- Any place on a public transportation vehicle owned or leased by local government. G.S. 143-601.

BILL ANALYSIS: The bill would repeal the current restrictions on enactment of local ordinances regulating smoking, and authorize a local government to adopt regulations of smoking in public places.

Local government means "any local political subdivision of the State or any authority or body created by any ordinance or rules of any such entity." G.S. 143-596(1).

EFFECTIVE DATE: Effective when it becomes law.

Senate Judiciary I Committee
March 27, 2007
Minutes

The Senate Judiciary I Committee met at 10:00 am on Tuesday, March 27, 2007 in Room 1027 of the Legislative Building. A quorum was present.

Senator Nesbitt called the meeting to order and told the committee that Senators Clodfelter and Goodall had identical bills on the agenda: SB 691/SB 223 (*Charlotte-Mecklenburg Police Jurisdiction).*

A proposed committee substitute for SB 691was distributed to the committee and Senator Albertson moved for its adoption. The motion carried.

Senator Goodall and Senator Clodfelter jointly explained the legislation. Sen. Goodall said that in North Carolina, the county officers have statewide arrest jurisdiction. The sheriffs in each county can arrest statewide, but in Mecklenburg County, the sheriff does not perform that function. This proposed legislation simply gives the Charlotte-Mecklenburg Police the extraterritorial jurisdiction to make arrests outside of Mecklenburg County for felonies committed in Mecklenburg County.

Senator Nesbitt asked Committee Counsel, Erika Churchill, to explain what the committee substitute does. She said the original bill actually referenced the Charlotte-Mecklenburg Police Department, which is a consolidated county-city police department. The com sub uses the phrase "county-city" consolidated police department, in case there are future consolidations, it could apply to those.

Senator Clodfelter said that the same peculiar situation may also exist in Gaston County. In the past, Mecklenburg and Gaston Counties had County Police Forces, so when consolidated, the counties had county-wide jurisdiction, but not state jurisdiction. This

bill would put the sheriffs of those counties on same basis as other sheriffs around the state.

Senator Clodfelter added that the Sheriff's Association doesn't oppose this bill if it only applies to Gaston and Mecklenburg Counties.

Senator Hoyle had concerns. The bill was temporarily displaced.

Senator Nesbitt recognized Senator Rand to explain SB 882 (Industrial Comm. Investigators/Sworn LEOs).

Senator Rand told the committee that currently, the Industrial Commission currently has four investigators to investigate Worker's Compensation fraud and other workers compensation violations. Some on the Commission feel that the agency's fraud investigations are hampered because the investigators are not sworn law enforcement officers.
After a brief discussion, Senator Hoyle moved for a favorable report.

Chris Scott from the Industrial Commission endorsed the bill.

Senator Soles wondered if the Industrial Commission could subcontract. Senator Rand didn't think so.

Senator Hoyle's motion for a favorable report was back before the committee and it passed.

Senator Nesbitt recognized Senator Julia Boseman was recognized to explain Senate Bill 229 (Murder/Violation of Prot. Order).

A proposed committee substitute was distributed to the members, and Senator Rand moved that it be adopted for consideration. The motion passed.

Committee Counsel Hal Pell was recognized to explain the changes made to the original bill, which had been before the Committee on March 1st. He said the proposed committee substitute would add an aggravating factor to the capital sentencing statute: the defendant knowingly violated a valid domestic violence protective order issued under Chapter 50 B of the General Statutes, and the victim was a person protected under the order. The act is effective December 1, 2007, and applies to offenses occurring on or after that date. *(See Bill Analysis)*

Senator Nesbitt was concerned that the new enhancement language took away the judge's discretion and Mr. Pell confirmed that it does.

Extensive discussion followed and members of the committee were concerned about the language in the committee substitute for SB 229 and how it did not address the aggravating factor issue properly

Senator Nesbitt appointed a subcommittee to work on SB 229 which consisted of Senators Rand, Clodfelter, Soles, Berger, and Tillman.

The meeting adjourned at 10:45 a.m.

Copies of Senate Bill 691, the proposed committee for SB 691, Bill Analysis for SB 691, SB 223, Senate Bill 882, Bill Analysis for SB 882, Senate Bill 229, the proposed committee substitute for SB 229, the Bill Analysis for SB 229 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, and 9, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Janette Whaley Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 691*

Short Title:	Charlotte-Mecklenburg Police Jurisdiction.	(Public)
Sponsors:	Senators Clodfelter; Dannelly and Graham.	
Referred to:	Judiciary 1 (Civil).	

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT OFFICERS OF THE CHARLOTTE-MECKLENBURG POLICE DEPARTMENT MAY ARREST PERSONS ANYWHERE IN THE STATE FOR OFFENSES COMMITTED WITHIN THE DEPARTMENT'S TERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-402(e) reads as rewritten:

"(e) County Officers, Outside Territory, for Felonies. – Law-enforcement officers of counties may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territory described in subsection (b). Law enforcement officers of the Charlotte-Mecklenburg Police Department may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territorial jurisdiction of the Charlotte-Mecklenburg Police Department."

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

PROPOSED COMMITTEE SUBSTITUTE S691-CSST-7 [v.2]

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT OFFICERS OF A CONSOLIDATED COUNTY-CITY LAW ENFORCEMENT DEPARTMENT MAY ARREST PERSONS ANYWHERE IN THE STATE FOR OFFENSES COMMITTED WITHIN THAT DEPARTMENT'S TERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-402(e) reads as rewritten:

"(e) County Officers, Outside Territory, for Felonies. – Law-enforcement officers of counties may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territory described in subsection (b). For purposes of this subsection, law enforcement officers of counties shall include all officers of consolidated county-city law enforcement agencies."

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

SENATE BILL 691:
Consolidated County-City Police Jurisdiction

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	March 23, 2007
Introduced by:	Sen. Clodfelter	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S343-CSST-7v2		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 691 makes defines county officers to include consolidated county-city law enforcement officers for purposes the ability to arrest persons anywhere in the State for felonies committed within the county officer's jurisdiction.***

[As introduced, this bill was identical to S223, as introduced by Sen. Goodall, which is currently in Senate Judiciary 1 (Civil).]

[As introduced, this bill was identical to H343, as introduced by Reps. Alexander, Earle, which is passed second reading in House on March 22, 2007.]

CURRENT LAW: G.S. 15A-402 sets out the jurisdiction of officers to make arrests.

- Law enforcement officers of the State may arrest persons anywhere within the State.
- County and city officers may arrest persons within their particular cities and counties and on any property owned by the city or county outside its limits.
- City officers may also arrest persons within one mile of the city limits.
- County officers may arrest a person anywhere in the State for felonies committed within the county or on county owned property.
- Both city and county officers may arrest a person outside their territory when the offense was committed within their jurisdiction and they are in hot pursuit of the person.

BILL ANALYSIS:

The pcs provides that consolidated county-city law enforcement officers have the same authority as county officers to arrest persons anywhere in the State for felonies committed within the police department's jurisdiction. One such consolidated county-city law enforcement agency is the Charlotte-Mecklenburg Police Department.

EFFECTIVE DATE: This act is effective when it becomes law.

S0691e1-SMST-CSST-7v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 223

Short Title:	Charlotte-Mecklenburg Police Jurisdiction.	(Public)
Sponsors:	Senators Goodall; Clodfelter, Dannelly, Graham, and Pittenger.	
Referred to:	Judiciary l (Civil).	

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT OFFICERS OF THE CHARLOTTE-MECKLENBURG POLICE DEPARTMENT MAY ARREST PERSONS ANYWHERE IN THE STATE FOR OFFENSES COMMITTED WITHIN THE DEPARTMENT'S TERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-402(e) reads as rewritten:

"(e) County Officers, Outside Territory, for Felonies. – Law-enforcement officers of counties may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territory described in subsection (b). Law enforcement officers of the Charlotte-Mecklenburg Police Department may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territorial jurisdiction of the Charlotte-Mecklenburg Police Department."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 882

Short Title:	Industrial Comm. Investigators/Sworn LEOs.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I (Civil).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE INDUSTRIAL COMMISSION TO EMPLOY SWORN LAW ENFORCEMENT OFFICERS TO PERFORM FRAUD INVESTIGATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-88.2(b) reads as rewritten:

"(b) The Commission shall:

(1) Perform investigations regarding all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, and refer possible criminal violations to the appropriate prosecutorial authorities;

(2) Conduct administrative violation proceedings; and

(3) Assess and collect civil penalties and restitution.

The Commission may employ sworn law enforcement officers to conduct the investigations mandated by this subsection."

SECTION 2. This act becomes effective July 1, 2007.

SENATE BILL 882:
Industrial Comm. Investigators/Sworn LEOs

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 23, 2007
Introduced by:	Sen. Rand	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: The First Edition of Senate Bill 882 would authorize the Industrial Commission to use sworn law enforcement officers to conduct investigations of workers compensation fraud and other workers compensation violations.

CURRENT LAW: Currently, the Industrial Commission, the agency that administers the Workers Compensation Act, is required to conduct investigations into fraud and other workers comp violations. The agency has a two-person fraud unit. But the agency does not have the authority to employ sworn law enforcement officers.

BILL ANALYSIS: SB 882 authorizes the Industrial Commission to employ sworn law enforcement officers to conduct the investigations the Commission is already required to conduct.

EFFECTIVE DATE: The bill would become effective July 1, 2007.

BACKGROUND: Some on the Industrial Commission feel that the agency's fraud investigations are hampered because it investigators are not sworn law enforcement officers.

S0882e1-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 229

Short Title: Murder/Violation of Prot. Order. (Public)

Sponsors: Senators Boseman; Jones and Rand.

Referred to: Judiciary 1 (Civil).

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CLASS A FELONY WITH LIFE IMPRISONMENT WITHOUT PAROLE IF A PERSON WHO WAS THE RESPONDENT OF, AND SUBJECT TO, A DOMESTIC VIOLENCE PROTECTIVE ORDER MURDERS THE PETITIONER WHO OBTAINED THE ORDER, OR SOME OTHER PARTY THAT HAD BEEN DESIGNATED AS A PERSON PROTECTED BY THE ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under ~~17~~18 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. ~~Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000.~~ Unless the conduct is covered under some other provision of law providing greater punishment, if a murder is committed (i) by a person who was a respondent and subject to a valid protective order entered pursuant to Chapter 50B of the General Statutes, by the courts of another state, or the courts of an Indian tribe, and (ii) the murder victim

was the petitioner, minor family member, or any other person designated as a protected party by the court order, then the murder shall be deemed to be in the first degree, a Class A felony, and any person who commits such murder shall be punished with imprisonment in the State's prison for life without parole. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

PROPOSED COMMITTEE SUBSTITUTE S229-CSRK-5 [v.6]

A BILL TO BE ENTITLED

AN ACT TO ADD AN AGGRAVATING FACTOR IN CAPITAL MURDER CASES THAT THE DEFENDANT KNOWINGLY VIOLATED A DOMESTIC VIOLENCE PROTECTIVE ORDER AND THE VICTIM WAS A PERSON PROTECTED UNDER THE ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-2000(e) reads as rewritten:

"(e) Aggravating Circumstances. – Aggravating circumstances which may be considered shall be limited to the following:

(1) The capital felony was committed by a person lawfully incarcerated.

(2) The defendant had been previously convicted of another capital felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.

(3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult.

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

(5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or a sex offense, arson,

burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(6) The capital felony was committed for pecuniary gain.

(7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(8) The capital felony was committed against a law-enforcement officer, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duty.

(9) The capital felony was especially heinous, atrocious, or cruel.

(10) 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.

(11) The murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which included the commission by the defendant of other crimes of violence against another person or persons.

(12) The defendant knowingly violated a valid protective order entered under Chapter 50B of the General Statutes, and the murder victim was the petitioner, minor family member, or any other person designated as a protected party by the order."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 229: Murder/Violation of Prot. Order

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 30, 2007
Introduced by:		**Summary by:**	Hal Pell
Version:	PCS to First Edition S229-CSRK		Committee Co-Counsel

SUMMARY: This proposed committee substitute would add an aggravating factor to the capital sentencing statute: the defendant knowingly violated a valid domestic violence protective order issued under Chapter 50B of the General Statutes, and the victim was a person protected under the order. The act is effective December 1, 2007, and applies to offenses occurring on or after that date.

CURRENT LAW:

- In order for a person convicted of first degree murder to receive the death penalty, a jury must (1) find, beyond a reasonable doubt, at least one of the statutory aggravating factors; (2) that the aggravating factor or factors are sufficiently substantial to call for the death penalty; and (3) that any mitigating circumstance or circumstances are insufficient to outweigh the aggravating factor or factors. The sentence recommendation must be unanimous.
- A defendant who, in a course of conduct that constitutes a felony, knowingly violates an order entered under Chapter 50B of the General Statutes, the courts of another state, or a tribal court, is guilty of a felony one class higher than the felony committed. [This provision does not apply to Class A or Class B1 felonies].
- It is an aggravating factor in any felony sentencing that the defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.

BILL ANALYSIS: The bill would add an aggravating factor to the capital sentencing laws. The factor would apply if a defendant, with actual notice of a domestic violence protective order issued by a State court under Chapter 50B of the General Statutes, murders a person protected under the order. The factor would not require formal service of the order on the defendant. If the State can prove that the defendant actually knew about the order, then the notice requirement would be met. The factor would only apply to orders issued by our State court. The State would be unable to utilize the aggravating factor if the victim was protected under an order by an Indian tribal court or by another state's court.

EFFECTIVE DATE: The act would be effective December 1, 2007, and apply to offenses committed on or after that date.

BACKGROUND: In the 2005 Session, the General Assembly directed the North Carolina Sentencing and Policy Advisory Commission to study this factor, and to report back to the General Assembly. The Commission reported with a survey of District Attorneys with statistical information on domestic violence homicides. (Attach. 1) The report also notes that three states have aggravating circumstances in their capital sentencing statute that involve violation of a domestic violence protective order (Illinois, Kentucky, and Pennsylvania). The aggravating circumstance in these states is limited to orders of the state's courts. In Louisiana, violation of an order issued by a judge or magistrate is an element of a first degree murder charge. In Washington, it is an element for aggravated (capital) first degree murder, and applies to orders from other states, in addition to Washington court orders. (over)

The final report of the Commission to the General Assembly is dated April 2006. (Attach. 2). The report included the following statistical information on page 1:

> Of the 370 homicide convictions during Fiscal Year 2004/05, the district attorneys provided information on 262. The Subcommittee found that 252 of the convictions were indicted for first degree murder and, therefore, eligible for the death penalty. Fifty-eight of those convictions involved a personal relationship between the defendant and the victim. Two of those convictions had a protective order pursuant to Chapter 50B of the General Statutes in effect at the time of the offense.

Following were the recommendations and commentary of the Commission:

1. The Sentencing Commission finds that there does not appear to be a need for the proposed aggravating circumstance and recommends against adopting it.

   Commentary: Members of the Commission raised the following points:

- The proposed aggravating circumstance would treat homicide cases where there was a personal relationship between the defendant and the victim and the victim got a 50B order differently from cases where the victim did not get one.
- The existing aggravating circumstances address specific behaviors that are aggravated; domestic violence is a serious problem and violating a 50B order may not necessarily address the most serious behavior.
- The proposed aggravating circumstance could result in violations of the principle of proportionality.
- A survey of homicide convictions in Fiscal Year 2004/05 showed that the proposed aggravating circumstance would rarely apply.
- Capital trials are very expensive and the district attorneys do not have enough resources to try additional capital cases.
- The number of aggravating circumstances in North Carolina is consistent with the average number of aggravating circumstances in other states.
- In 2001 the North Carolina Bar Association recommended reducing the number of aggravating circumstances.
-

2. The Sentencing Commission recognizes that domestic violence is an extremely serious problem in North Carolina and that there have been many innovative programs developed to address the problem in different ways. The Sentencing Commission recommends the continued support and expansion of such programs.

   Commentary: Commission members identified programs like the domestic violence prosecution unit and family court as programs that address the issues related to domestic violence. They recognized that resources are limited but that a multi-faceted approach to the problem would be the most effective.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
DEATH PENALTY AGGRAVATING CIRCUMSTANCE STUDY SUBCOMMITTEE
FEBRUARY 3, 2006

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

SESSION LAW 2005-295
HOUSE BILL 1436

AN ACT TO DIRECT THE SENTENCING COMMISSION TO STUDY AND MAKE RECOMMENDATIONS REGARDING EVIDENCE THAT A MURDER WAS COMMITTED IN VIOLATION OF A VALID DOMESTIC VIOLENCE PROTECTIVE ORDER AS AN AGGRAVATING FACTOR IN CAPITAL SENTENCING.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall study aggravating factors which may be considered in capital felony sentencing pursuant to G.S. 15A-2000(e). In particular, the Commission shall examine the question of whether the State's capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe. The Commission shall report its findings and recommendations to the 2005 General Assembly not later than May 1, 2006. The report shall describe the Commission's deliberations and shall include any policy recommendations and proposed legislation.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:58 p.m. this 22nd day of August, 2005

RESULTS OF SURVEY OF DISTRICT ATTORNEYS
(Revised 2/2/06)

I. Survey

A. There were 370 convictions for a homicide offense during FY 2004/05 where the defendant was charged with either "first degree murder" or "murder".

B. The convictions were divided by district and county and sent to each of the 39 district attorneys' offices.

C. The district attorneys were asked to report for each conviction:

1. Was the defendant indicted for first degree murder?

2. Was there a personal relationship between the defendant and the victim as defined in G.S. 50B-1?

3. Was there a protective order in effect between the defendant and the victim at the time of the murder (pursuant to Chapter 50B of the General Statutes of North Carolina, or imposed by the courts of another state or the courts of an Indian tribe)?

4. If there was a protective order in place:
   (a) Had either party sought to have the protective order modified or removed?
   (b) Had the party who sought the order subverted the order by voluntarily resuming the relationship?

D. Twenty-seven districts (69%) returned surveys providing information on 262 of the convictions (71%).

DIST.	COUNTY(S)	DIST.	COUNTY(S)
2	Beaufort, Hyde, Martin, Tyrrell, Washington	17B	Stokes, Surry
3A	Pitt	18	Guilford
3B	Carteret, Craven, Pamlico	19A	Cabarrus
4	Duplin, Jones, Onslow, Sampson	19B	Montgomery, Moore, Randolph
6B	Bertie, Hertford, Northampton	19C	Rowan
7	Edgecombe, Nash, Wilson	20	Anson, Richmond, Stanly, Union
9A	Caswell, Person	21	Forsyth
12	Cumberland	24	Avery, Madison, Mitchell, Watauga, Yancey
13	Bladen, Brunswick, Columbus	26	Mecklenburg
14	Durham	27A	Gaston
15A	Alamance	27B	Cleveland, Lincoln
16A	Hoke, Scotland	28	Buncombe
16B	Robeson	29	Henderson, McDowell, Polk, Rutherford, Transylvania
17A	Rockingham		

II. Results

A. From the surveys that were returned, there were 252 convictions for a homicide offense in FY 2004/05 for which the defendant was indicted for first degree murder. The remaining ten defendants were indicted for other homicide offenses.

B. A personal relationship was reported to exist between the defendant and the victim for 58 of the convictions (24% - Fourteen convictions were excluded because it was not clear whether one district identified convictions where there may have been a personal relationship but not a 50B order).

1. For two of those convictions, a 50B order was reported to have been in place at the time of the offense.
   a. For both of the convictions, there was no reported effort to have the protective order modified or removed.
   b. For one of the convictions, it was reported that the victim had voluntarily resumed the relationship.

2. For two of those convictions, a 50B order was reported to have existed previously but was not in effect at the time of the offense.
   a. For one of the convictions, it was reported that one of the parties had sought to have the protective order modified or removed.
   b. For both of the convictions, it was reported that the victim had voluntarily resumed the relationship.

III. Punishment

A. Of the 58 convictions where a personal relationship was reported:
   1. Twenty-one of them (36%) were for first degree murder (Class A). They all received life sentences.
   2. Twenty-eight of them (48%) were for second degree murder (Class B2).
   3. Six of them (10%) were for voluntary manslaughter (Class D).
   4. Three of them (5%) were for involuntary manslaughter (Class F).

B. One of the two convictions where a 50B order was reported to have been in place at the time of the offense was for first degree murder (Class A) and the other was for voluntary manslaughter (Class D).

C. The two convictions where a 50B order was reported to have existed previously were for first degree murder (Class A).

AGGRAVATING CIRCUMSTANCES IN OTHER STATES

- Thirty-eight states authorize the death penalty as a disposition for certain offenses.

- The number of aggravating circumstances ranges from two to twenty-two, with the average being eleven. North Carolina has eleven aggravating circumstances.

- Several states incorporate aggravating circumstances into the first degree murder offense or into an aggravated murder offense.

- Five states have aggravating circumstances or elements that address a first degree murder where there was a protective order in place.

    - Illinois – "[T]he murdered individual was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act of 1986 [750 ILCS 60/101 et seq.];" 720 ILCS 5/9-1(b)(19), (2005)
      - *Aggravating circumstance.*
      - *Added to statute in 1998.*

    - Kentucky – "The offender murdered the victim when an emergency protective order or a domestic violence order was in effect, or when any other order designed to protect the victim from the offender, such as an order issued as a condition of a bond, conditional release, probation, parole, or pretrial diversion, was in effect." KRS § 532.025(2)(a)8, (2005)
      - *Aggravating circumstance.*
      - *Added to statute in 1998.*

    - Louisiana – "First degree murder is the killing of a human being: When the offender has specific intent to kill or to inflict great bodily harm and there has been issued by a judge or magistrate any lawful order prohibiting contact between the offender and the victim in response to threats of physical violence or harm which was served on the offender and is in effect at the time of the homicide." La. R.S. 14:30 A(8), (2005)
      - *Element of first degree murder. Jury would still have to find an aggravating circumstance.*
      - *Added to statute in 2003.*

    - Pennsylvania – "At the time of the killing the defendant was subject to a court order restricting in any way the defendant's behavior toward the victim pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or any other order of a court of common pleas or of the minor judiciary designed in whole or in part to protect the victim from the defendant." 42 Pa.C.S. § 9711(d)(18), (2005)
      - *Aggravating circumstance.*
      - *Added to statute in 1997.*

- Washington – "At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;" Rev. Code Wash. (ARCW) § 10.95.020(13), (2005)

  - "At the time the person committed the murder, the person and the victim were 'family or household members' as that term is defined in *RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:
  (a) Harassment as defined in RCW 9A.46.020; or
  (b) Any criminal assault." Rev. Code Wash. (ARCW) § 10.95.020(14), (2005)
  - *Aggravating circumstances to establish aggravated first degree murder. A special sentencing proceeding must then be held in order to seek the death penalty, but the burden is on the defendant to prove mitigating circumstances at that point. If the proceeding is not held, the sentence is life imprisonment.*
  - *Added to statute in 1998.*

NORTH CAROLINA INFORMATION

I. First Degree Murder

A person who:
(1) kills
(2) another living human being
(3) (a) (i) with malice and
(ii) with a specific intent to kill formed after premeditation and deliberation; or
(b) by a nuclear, biological, or chemical weapon of mass destruction, poisoning, lying in wait, imprisonment, starvation, or torture; or
(c) while committing or attempting arson, rape, sex offense, robbery, burglary, kidnapping, or any felony in which a deadly weapon is used.

(G.S. 14-17)

II. Capital Sentencing

The State gives notice of its intent to seek the death penalty prior to trial. A separate proceeding is held after the trial to determine the penalty. The penalty decision is based on the jury finding beyond a reasonable doubt that one or more of the aggravating circumstances exist, that the aggravating circumstances outweigh any mitigating circumstances that are found to exist, and that the aggravating circumstances are sufficiently substantial to call for the death penalty.

A. Aggravating circumstances. The list is exclusive. *(G.S. 15A-2000(e))*

(1) The capital felony was committed by a person lawfully incarcerated.
(2) The defendant had been previously convicted of another capital felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.
(3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult.
(4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
(5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.
(6) The capital felony was committed for pecuniary gain.
(7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(8) The capital felony was committed against a law-enforcement officer, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duty.
(9) The capital felony was especially heinous, atrocious, or cruel.
(10) 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.
(11) The murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which included the commission by the defendant of other crimes of violence against another person or persons.

B. Mitigating circumstances. The list is not exclusive. *(G.S. 15A-2000(e))*

(1) The defendant has no significant history of prior criminal activity.
(2) The capital felony was committed while the defendant was under the influence of mental or emotional disturbance.
(3) The victim was a voluntary participant in the defendant's homicidal conduct or consented to the homicidal act.
(4) The defendant was an accomplice in or accessory to the capital felony committed by another person and his participation was relatively minor.
(5) The defendant acted under duress or under the domination of another person.
(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired.
(7) The age of the defendant at the time of the crime.
(8) The defendant aided in the apprehension of another capital felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
(9) Any other circumstance arising from the evidence which the jury deems to have mitigating value.

III. Protective Orders

A person alleges acts of domestic violence against himself or herself or a minor child who resides with them or is in their custody. The court may grant any protective order to bring about a cessation of acts of domestic violence.

Protective orders entered pursuant to Chapter 50B are for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed one year, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order. The court may renew a protective order for good cause. The commission of an act of domestic violence by the defendant after entry of the current order is not required for an order to be renewed.

A copy of any order entered and filed shall be issued to each party.

A person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order is guilty of a felony one class higher than the principal felony described in the charging document. This does not apply to a person who is charged with or convicted of a Class A or B1 felony.

A. Definitions. *(G.S. 50B-1)*

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or
(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

(1) Are current or former spouses;
(2) Are persons of opposite sex who live together or have lived together;
(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
(4) Have a child in common;
(5) Are current or former household members;
(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(c) As used in this Chapter, the term "protective order" includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties.

B. Protective Orders. *(G.S. 50B-3)*

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order to bring about a cessation of acts of domestic violence. The orders may:

(1) Direct a party to refrain from such acts;
(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
(3) Require a party to provide a spouse and his or her children suitable alternate housing;

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process;
(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
(6) Order either party to make payments for the support of a minor child as required by law;
(7) Order either party to make payments for the support of a spouse as required by law;
(8) Provide for possession of personal property of the parties;
(9) Order a party to refrain from doing any or all of the following:
a. Threatening, abusing, or following the other party,
b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
c. Otherwise interfering with the other party;
(10) Award attorney's fees to either party;
(11) Prohibit a party from purchasing a firearm for a time fixed in the order;
(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission; and
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

IV. Data

A. First and second degree murder convictions.

Based on FY 2004/05 preliminary data, there were 85 first-degree murder convictions, 81 received life without parole and four received a death sentence. Fifty-one (or 60%) of the first degree murder convictions resulted from a jury trial, with 48 receiving life without parole and three receiving a death sentence. There were also 208 second-degree murder convictions in FY 2004/05.

B. Protective orders.

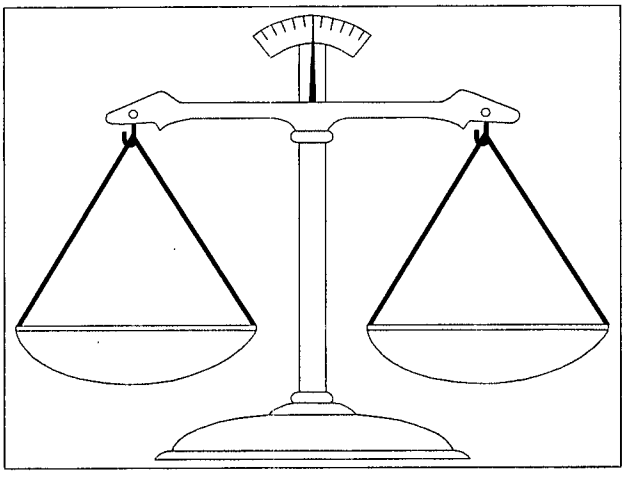
It is not known how many of these offenses occurred at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe.

V. Structured Sentencing and Capital Sentencing

When developing structured sentencing, the Sentencing Commission decided that first degree murder would not be included in the structure because the General Assembly had set the punishment as life or death. The offense was also exempt from the felony offense

classification criteria because of the unique nature of homicide offenses. These decisions were consistent with the way other states with sentencing structures had treated first degree murder.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION



REPORT ON STUDY OF MURDER COMMITTED IN VIOLATION OF A VALID DOMESTIC VIOLENCE PROTECTIVE ORDER AS AN AGGRAVATING CIRCUMSTANCE IN CAPITAL SENTENCING PURSUANT TO SESSION LAW 2005-295

SUBMITTED TO THE 2006 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY
APRIL 2006

THE HONORABLE W. ERWIN SPAINHOUR
CHAIRMAN

SUSAN KATZENELSON
EXECUTIVE DIRECTOR

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEMBERSHIP

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Superior Court Judge

Talmage Baggett
NC Association of County Commissioners

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Professor, Fayetteville State University

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State Representative

Donn Hargrove
NC Department of Juvenile Justice and Delinquency Prevention

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NC Association of Chiefs of Police

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NC Conference of Superior Court Judges

Sherry Pilkington
NC Department of Correction

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NC Victim Assistance Network

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NC Association of Clerks of Superior Court

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NC Community Sentencing Association

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NC Academy of Trial Lawyers

Vacant
State Senator

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

REPORT TO THE NORTH CAROLINA GENERAL ASSEMBLY
In compliance with
SESSION LAW 2005-295

April, 2006

I. Introduction

During the 2005 Session, the General Assembly charged the Sentencing and Policy Advisory Commission with studying the following issue:

> [T]he Commission shall examine the question of whether the State's capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe. (Session Law 2005-295)

The Commission was asked to report its findings and recommendations, including any proposed legislation, to the 2005 General Assembly no later than May 1, 2006.

The Commission met on December 2, 2005, and discussed the issue. The members agreed that it would be necessary to look at how often this situation occurs in North Carolina and how other states have addressed it. The Commission established the Death Penalty Aggravating Circumstance Study Subcommittee to develop recommendations for the Commission to consider.

II. Deliberations

The Death Penalty Aggravating Circumstance Study Subcommittee met on February 3, 2006. The Subcommittee began by examining homicide convictions in North Carolina from Fiscal Year 2004/05. The Administrative Office of the Courts criminal database did not contain information on protective orders pursuant to Chapter 50B of the General Statutes, so the staff surveyed the district attorneys to find out which homicide convictions involved parties to a protective order. Of the 370 homicide convictions during Fiscal Year 2004/05, the district attorneys provided information on 262. The Subcommittee found that 252 of the convictions were indicted for first degree murder and, therefore, eligible for the death penalty. Fifty-eight of those convictions involved a personal relationship between the defendant and the victim. Two of those convictions had a protective order pursuant to Chapter 50B of the General Statutes in effect at the time of the offense.

The Subcommittee then looked at the 37 other states that authorize the death penalty as a disposition to see if any of them had addressed this issue. They found that three states had an

aggravating circumstance and two states had an element of a homicide offense that dealt with domestic violence or protective orders in general.

The Subcommittee first considered whether any of North Carolina's existing aggravating circumstances would cover the situation where a capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order. After reviewing and discussing the aggravating circumstances, the members came to the conclusion they would not.

The Subcommittee then considered whether there should be a new aggravating circumstance to cover that situation. The Subcommittee developed recommendations and reported them to the Sentencing Commission. The Commission discussed the recommendations and adopted them at its March 17, 2006, meeting.

III. Recommendations

1. **The Sentencing Commission finds that there does not appear to be a need for the proposed aggravating circumstance and recommends against adopting it.**

   Commentary: Members of the Commission raised the following points:
   - The proposed aggravating circumstance would treat homicide cases where there was a personal relationship between the defendant and the victim and the victim got a 50B order differently from cases where the victim did not get one.
   - The existing aggravating circumstances address specific behaviors that are aggravated; domestic violence is a serious problem and violating a 50B order may not necessarily address the most serious behavior.
   - The proposed aggravating circumstance could result in violations of the principle of proportionality.
   - A survey of homicide convictions in Fiscal Year 2004/05 showed that the proposed aggravating circumstance would rarely apply.
   - Capital trials are very expensive and the district attorneys do not have enough resources to try additional capital cases.
   - The number of aggravating circumstances in North Carolina is consistent with the average number of aggravating circumstances in other states.
   - In 2001 the North Carolina Bar Association recommended reducing the number of aggravating circumstances.

2. **The Sentencing Commission recognizes that domestic violence is an extremely serious problem in North Carolina and that there have been many innovative programs developed to address the problem in different ways. The Sentencing Commission recommends the continued support and expansion of such programs.**

   Commentary: Commission members identified programs like the domestic violence prosecution unit and family court as programs that address the issues related to domestic violence. They recognized that resources are limited but that a multi-faceted approach to the problem would be the most effective.

Appendix

Mandate from the General Assembly

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

SESSION LAW 2005-295
HOUSE BILL 1436

AN ACT TO DIRECT THE SENTENCING COMMISSION TO STUDY AND MAKE RECOMMENDATIONS REGARDING EVIDENCE THAT A MURDER WAS COMMITTED IN VIOLATION OF A VALID DOMESTIC VIOLENCE PROTECTIVE ORDER AS AN AGGRAVATING FACTOR IN CAPITAL SENTENCING.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall study aggravating factors which may be considered in capital felony sentencing pursuant to G.S. 15A-2000(e). In particular, the Commission shall examine the question of whether the State's capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe. The Commission shall report its findings and recommendations to the 2005 General Assembly not later than May 1, 2006. The report shall describe the Commission's deliberations and shall include any policy recommendations and proposed legislation.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:58 p.m. this 22nd day of August, 2005

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 27, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Octavia Rainy	NC Fair Share
James Andrews	NC State AFL-CIO
Paula A. Wolf	NC - NOW
	NCR
Sam Constance	NCIC
	NCIC
Jeff Mixon	Civitas
Judy McConnell	IOG
Danny McMahan	Investment Comm
Daniel Baum	Kennedy Covington
Amber Lueker Barwick	Conference of DAs

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — March 27, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Al Ripley	NC Justice Ctr
Fred Allen	NC Aggregates Assn.
Colleen Kochanek	Smith Moore
Mike Causey	CHF
JOHN GOODMAN	NC CHAMBER
[illegible]	NAMRS

SENATE JUDICIARY I COMMITTEE
(Civil)

March 29, 2007
10 a.m. –Room 1128

MINUTES

The Senate Judiciary Committee met Thursday, March 29, 2007 in Room 1128 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Vice Chairman R.C. Soles, Sen. Member Charlie Albertson, Sen. Julia Boseman, Sen. Janet Cowell, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Ellie Kinnaird, Sen. Tony Rand, Sen. Richard Stevens and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:09 a.m. Chairman Nesbitt said that two bills were pulled from today's agenda, Senate Bill 88 and Senate Bill 717; he continued that Senate Bill 88 was pulled by request of the sponsor and Senate Bill 717 was pulled due because the "interested parties wanted to talk."

Chairman Nesbitt continued saying that there are more than 200 bills that have yet to be discussed in committee and that a crossover deadline in May was approaching. "We need to get on these bills," Nesbitt said, and introduced the first bill.

Sen. Rand approached the podium to discuss Senate Bill 118, which allows the governor to declare a vacancy in the office of a judge or district attorney if that official could no longer practice law. Sen. Rand is the primary sponsor of the bill; the bill is co-sponsored by Senators. Atwater, Goodall, Purcell and Snow. A proposed committee substitute introduced by Sen. Rand passed committee unanimously. Chairman Nesbitt asked staff attorney Erika Churchill to explain the committee substitute. Ms. Churchill explained that the substitute clarifies that the judge or district attorney has been disbarred and that if a judge or district attorney may continue receiving a salary if pending disbarment.

Chairman Nesbitt recognized a filed amendment by Sen. Stevens, moving to amend the bill on page two, line three. The amendment reads "deleting the word "may" to substitute with "shall." Sen. Stevens also motioned for passage of the amendment with unanimous approval. A second amendment introduced by Sen. Brunstetter called for inserting in between at page two line seven of the bill "the person has been disbarred and suspended and ..." Sen. Brunstetter motioned for approval and the amendment passed unanimously.

Before voting to approve the amended committee substitute Sen. Rand explained that there was a case in North Carolina where a district attorney was elected to the office but was unlicensed to practice law. "He had a salary but could not hold court," Rand said. Sen. Brunstetter motion to approve the amended committee substitute for favorable report, the motion passed unanimously.

Chairman Nesbitt called Sen. Albertson to discuss Senate Bill 716, allowing for civil penalties for violations of the poultry products inspection act. Albertson told the committee that the bill was a technical correction to "make sure poultry products are inspected." Sen. Rand motioned for a favorable report; the motion passed unanimously.

Chairman Nesbitt adjourned the meeting at 10:29 a.m.

Copies of SB 118, Proposed Committee Substitute for SB 118, Analysis for the PCS for 118, SB 716 and the Bill Analysis for SB 716 are attached to these Minutes as Attachments 1, 2, 3, 4, and 5, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 118

Short Title:	Removal of Unqualified Judges and DAs.	(Public)
Sponsors:	Senators Rand; and Goodall.	
Referred to:	Judiciary 1 (Civil).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE GOVERNOR TO DECLARE A VACANCY IN THE OFFICE OF DISTRICT COURT JUDGE, SUPERIOR COURT JUDGE, JUDGE OF THE COURT OF APPEALS, JUSTICE OF THE SUPREME COURT, OR DISTRICT ATTORNEY WHEN THE INCUMBENT DOES NOT HAVE THE LEGAL RIGHT TO EXERCISE ITS FUNCTIONS.

Whereas, the North Carolina Supreme Court in State ex rel. Atkins v Fortner, 236 NC 264 (1952) declared that an office is vacant when there is no incumbent who has the legal right to exercise its functions; and

Whereas, Article IV, Section 22 of the North Carolina Constitution requires that a person must be duly authorized to practice law in the courts of this State in order to hold judicial office and Article IV, Section 18 has a similar requirement for District Attorney; and

Whereas, procedures for impeachment or removal are unnecessary in cases where an officer has been disbarred as it is solely a factual determination; and

Whereas, Article IV of the Constitution provides that the Governor shall appoint to fill vacancies in superior court, the Court of Appeals, the Supreme Court, and district attorney, and by statute the Governor fills vacancies in district court; and

Whereas, it would be most appropriate to have the officer responsible for filling a vacancy declare, after due process, that a vacancy exists in such office; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 31B.

"Declaration of Vacancy, Suspension of Salary.

"**§ 7A-410. Vacancy exists on disbarment.**

When a judge of the district court, judge of the superior court, judge of the Court of Appeals, justice of the Supreme Court, or a district attorney is no longer authorized to

practice law in the courts of this State, the Governor may declare the office vacant. Prior to making such declaration, the Governor shall notify the justice, judge, or district attorney at least 10 days in advance of taking such action and shall afford the justice or judge the opportunity to be heard on the matter.

"**§ 7A-410.1. Suspension of salary.**

When a justice, judge, or district attorney has been disbarred or suspended from the practice of law under G.S. 84-28 but has not yet been removed from office, the salary of the justice, judge, or district attorney is suspended immediately. If the order of disbarment or suspension is reversed on appeal, the salary shall be paid retroactively from the date the salary was suspended."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 118
PROPOSED COMMITTEE SUBSTITUTE S118-CSST-14 [v.2]

3/28/2007 5:08:04 PM

Short Title: Removal of Unqualified Judges and DAs. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE GOVERNOR TO DECLARE A VACANCY IN THE OFFICE OF DISTRICT COURT JUDGE, SUPERIOR COURT JUDGE, JUDGE OF THE COURT OF APPEALS, JUSTICE OF THE SUPREME COURT, OR DISTRICT ATTORNEY WHEN THE INCUMBENT DOES NOT HAVE THE LEGAL RIGHT TO EXERCISE ITS FUNCTIONS.

Whereas, the North Carolina Supreme Court in State ex rel. Atkins v Fortner, 236 NC 264 (1952) declared that an office is vacant when there is no incumbent who has the legal right to exercise its functions; and

Whereas, Article IV, Section 22 of the North Carolina Constitution requires that a person must be duly authorized to practice law in the courts of this State in order to hold judicial office and Article IV, Section 18 has a similar requirement for District Attorney; and

Whereas, procedures for impeachment or removal are unnecessary in cases where an officer has been disbarred as it is solely a factual determination; and

Whereas, Article IV of the Constitution provides that the Governor shall appoint to fill vacancies in superior court, the Court of Appeals, the Supreme Court, and district attorney, and by statute the Governor fills vacancies in district court; and

Whereas, it would be most appropriate to have the officer responsible for filling a vacancy declare, after due process, that a vacancy exists in such office; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 31B.

"Declaration of Vacancy, Suspension of Salary.

"**§ 7A-410. Vacancy exists on disbarment.**

When a judge of the district court, judge of the superior court, judge of the Court of Appeals, justice of the Supreme Court, or a district attorney is no longer authorized to practice law in the courts of this State, the Governor may declare the office vacant. Prior to making such declaration, the Governor shall notify the justice, judge, or district attorney at least 10 days in advance of taking such action and shall afford the justice or judge the opportunity to be heard on the matter. For purposes of this Article, the term 'no longer authorized to practice law' means that all appeals under G.S. 84-28 have been exhausted.

"**§ 7A-410.1. Suspension of salary.**

When a justice, judge, or district attorney has been disbarred or suspended from the practice of law under G.S. 84-28 but the office has not been declared vacant under G.S. 7A-410, the salary of the justice, judge, or district attorney is suspended immediately. If the order of disbarment or suspension is reversed on appeal, the salary shall be paid retroactively from the date the salary was suspended."

SECTION 2. G.S. 1-524 reads as rewritten:

"**§ 1-524. Possession of office not disturbed pending trial.**

(a) In any civil action pending in any of the courts of this State in which the title to an office is involved, the defendant being in the possession of the office and discharging the duties thereof shall continue therein pending the action, and no judge shall make a restraining order interfering with or enjoining such officer in the premises. The officer shall, notwithstanding any such order, continue to exercise the duties of the office pending the litigation, and receive the emoluments thereof.

(b) This section shall not apply to any person subject to Article 31B of Chapter 7A of the General Statutes."

SECTION 3. This act is effective when it becomes law, and does not apply to persons elected to or serving in the capacity of justice or judge on or before January 1, 1981.

SENATE BILL 118: Removal of Unqualified Judges and DAs

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	March 28, 2007
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S118-CSST-14v2		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 118 would provide a mechanism for the Governor to declare a vacancy in the office of justice, judge, or district attorney when one of those officials is no authorized to practice law in North Carolina.

CURRENT LAW: Section 22 of Article IV of the North Carolina Constitution requires that to be eligible for appointment or election as a justice or judge, one must be authorized to practice law in North Carolina. Section 18(1) of Article IV requires that to be eligible for the office of District Attorney, one must be authorized to practice law in North Carolina. Vacancies in those offices are filled by appointment of the Governor. Section 19. Article IV; G.S. 163-9.

G.S. 1-524 provides that if a civil suit involving title to office is on-going, no judge can enter a restraining order interfering with or enjoining the officer from discharging the duties of the office pending the outcome of the litigation. Additionally, the officer remains entitled to receive the emoluments of the office.

G.S. 84-28 provides the North Carolina State Bar with the authority to discipline and disbar attorneys from the practice of law in this State. The decision to discipline, disbar or suspend a law license may be appealed as of right to the Court of Appeals. An attorney who has been disbarred may not seek reinstatement to be authorized to practice law again for at least five years from the effective date of the disbarment.

The General Statutes do not address the suspension from office, while pending appeal, any attorney holding the office of justice, judge or district attorney who is appealing a decision of the State Bar.

BILL ANALYSIS: The proposed committee substitute would:

- Allow the Governor to declare vacant the office of justice, judge or district attorney held by an attorney who is no longer authorized to practice law in this State. The term no longer authorized to practice law means that all appeals under G.S. 84-28 have been exhausted, and the disbarment or suspension is final. Prior to declaring the office vacant, the Governor must notify the officer-holder and allow that person an opportunity to be heard.
- Provide that the salary of office is suspended immediately upon disbarment or suspension from the practice of law in this State, if the office has not been declared to be vacant by the Governor. If the disbarment or suspension is reversed on appeal, the office-holder is to be paid the salaries withheld retroactively.

EFFECTIVE DATE: Effective when it becomes law, and does not apply to persons elected to or serving in the capacity of justice or judge on or before January 1, 1981.

S0118e1-SMST-CSST-14v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 716*

Short Title:	Poultry Products Inspection Act Penalties.-AB	(Public)
Sponsors:	Senators Albertson; Bingham, Hoyle, Kerr, Purcell, and Snow.	
Referred to:	Judiciary I (Civil).	

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CIVIL PENALTIES FOR VIOLATIONS OF THE POULTRY PRODUCTS INSPECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-549.35(c) reads as rewritten:

"(c) The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this ~~Article or~~Article, Article 49B, Article 49D, or any rule ~~promulgated thereunder.~~adopted under any of these Articles. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act becomes effective October 1, 2007, and applies to penalties assessed on or after that date.

SENATE BILL 716:
Poultry Products Inspection Act Penalties.-AB

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Finance	**Date:**	March 28, 2007
Introduced by:	Sen. Albertson	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 716 provides for a civil penalty for violations of the Poultry Products Inspections Act.

[As introduced, this bill was identical to H589, as introduced by Rep. Hill, which is currently in House Agriculture.]

CURRENT LAW: The North Carolina Department of Agriculture and Consumer Services is authorized to assess a $5,000 civil penalty for violations of Article 49B, Meat Inspections Requirements, and Article 49C, Federal/State Cooperation as to Meat Inspections.

Article 49D of Chapter 106 sets forth the Poultry Products Inspections Act, which has criminal penalties for violations of certain provisions. Other provisions, such as the labeling standards, carry no criminal penalty.

BILL ANALYSIS:

Senate Bill 716 amends G.S. 106-549.35(c) to add Article 49D, Poultry Products Inspections, to the section providing that a civil penalty of up to $5,000 may be imposed for violations of that Article.

The proceeds of any civil penalty are to be remitted to the Civil Penalty and Forfeiture Fund for the schools.

EFFECTIVE DATE:

The act becomes effective October 1, 2007, and applies to penalties assessed on or after that date.

Barbara Riley substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-29

S. B. No. 118 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Stevens

1 moves to amend the bill on page 2, line 3

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 deleting the phrase "may" and substituting

5 _____

6 the phrase "shall".

7 _____

8 _____

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19 _____

SIGNED Richard J. Stevens

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. _____ DATE 3-29

S. B. No. 118 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Brunstetter

moves to amend the bill on page 2, line 7

( ) WHICH CHANGES THE TITLE

by the following

inserting " between "that" and "all" on that

line 6

"the ~~pose~~ person has been disbarred

or suspended and".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Judiciary I — 3/29/07

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
OCTAVIA RAINEY	NC FAIR SHARE
Jeff Mixon	Civitas
CASANDRA WHITE	GOV. OFFICE
REV. MARK CREECH	CAL
Jane Fitzgerald	NCFPC
Christine Wunsche	10G - Daily Bulletin
Steve Woodson	NCFB
Paula Boynton Page	NCFB
	NCFPC
Ray Stanley	NCDA&CS

VISITOR REGISTRATION SHEET

Judiciary I — 3/29/07

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wells	Agriculture.
David McLeod	NCDACS
PAUL LANIER	CHILD FATALITY TASK FORCE
Selena Bernier	Child Fatality Task Force
Lisa Martin	NC HBA
Pastair Moody	NC HBA

SENATE JUDICIARY I COMMITTEE
(Civil)

April 3, 2007
10 a.m. –Room 1128

MINUTES

The Senate Judiciary Committee met Tuesday, April 3 in Room 1128 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Vice Chair R. C. Soles, Sen. Member Charlie Albertson, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Malcolm Graham, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Tony Rand, Sen. Richard Stevens and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:10 a.m. and recognized Sen. Rand for Senate Bill 6, which would provide for an early organizational session prior to the legislature convening every odd year. A proposed committee substitute was introduced and Rand motioned for adoption. The motion passed unanimously.

Sen. Stevens proposed amending the bill on page 1, line 11 by inserting the phrase "adopting" between "and" and "Rules" on that line. Rand motioned for approval of the amendment and the motion passed unanimously.

In discussion Sen. Kinnaird voiced that she was concerned that house and senate members might not attend as the proposed organizational session is so close to the holidays. Sen. Brock shared that concern, saying "I know we're tobacco road, but you see a lot of people go to games."

Sen. Rand motioned for favorable report and the motion passed unanimously.

A second amendment passed for Senate Bill 6. The amendment, filed by Sen. Rand, changed wording on page 1, line 11 of the bill to remove "of the house."

The amended sentence in the bill now reads: "The regular session of the Senate and House of Representatives shall be held biennially beginning at 10 a.m. on the first Monday in January next after their election for the purpose of electing and adopting rules."

Chairman Nesbitt then moved to a proposed committee substitute for Senate Bill 9, a bill requiring a defendant served with a domestic violence protective order to be prohibited from purchasing or attempting to purchase a firearm. Sen. Julia Boseman is the primary sponsor of the bill and the bill is cosponsored by Senators. Atwater, Cowell, Dannelly, Goodall, and Jenkins. Sen. Boseman moved for adoption of the proposed committee substitute. The motion passed unanimously.

Sen. Boseman explained to the committee that the proposed committee substitute would take away a judge's discretion at the domestic violence ten day hearing to order whether or not the defendant could purchase firearms.

Chairman Nesbitt asked staff attorney Hal Pell to further explain the bill. Mr. Pell explained that the bill changes current law that reads at the ten day hearing the court is required to ask the defendant about possession or firearms, and that the court can issue surrender. If the court does, the defendant is prohibited from purchasing a firearm.

In reading over the bill Sen. Berger motioned for an amendment to add the word "reasonable" before the word fear on page 2, line 14.

The amendment passed and will read, "... or placed the plaintiff or a member of the plaintiff's family or household in reasonable fear of serious bodily injury."

Discussion ensured regarding the bill. Chairman Nesbitt noted that the bill needed to be rewritten. Sen. Brunstetter questioned why a judge should lose his ability to use discretion. "Why do we have to go and monkey with that discretion," Brunstetter said. "I do not feel it is necessary."

Sen. Malone asked how, if the bill passed the Senate, it would work in application. Sen. Boseman replied that "we need to do more to protect women in these situations."

Sen. Rand noted that if the bill became law, law enforcement would have more power through being able to arrest when a defendant is trying to purchase the weapon rather than subsequent to an assault.

Sen. Brock asked about those in the military or who work in sporting goods stores. Mr. Pell replied that there was an exemption on page four, lines 29-31 of the bill.

After more discussion, Chairman Nesbitt asked Sen. Boseman to rework the bill, and it was tabled.

The meeting moved to a proposed committee substitute for Senate Bill 229, which adds an aggravating factor in capital murder cases when the defendant knowingly violated a domestic violence order and the victim was protected under that order. Sen. Boseman motioned to accept the proposed committee substitute, motion passed unanimously.

Chairman Nesbitt then called on Mr. Pell. Mr. Pell noted that if the bill were to become law, a district attorney trying the case would look at a first degree murder charge. John Madler of the North Carolina Sentencing and Policy Advisory Commission told the committee that it was against the bill because the bill would not cover domestic victims not protected by an order. Chairman Nesbitt commented that it should be taken more seriously when a protective order is violated. Sen. Rand agreed and motioned for a favorable report.

Chairman Nesbitt called for a vote. The vote did not pass unanimously, however the bill did receive a favorable report.

The meeting was adjourned at 11:00 a.m.

Pages serving the committee were Darious Smith of Raleigh and Ashley Flynt of Stokesdale.

Copies of SB 6, a proposed committee substitute for SB 6, an Analysis for the PCS for SB 6, a Steven's amendment for SB 6, a Rand amendment for SB 6, SB 9, proposed committee substitute for SB 9, an Analysis for SB 9 and a Berger amendment to SB 9 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8 and 9 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 6

Short Title:	Early Organizational Session.	(Public)
Sponsors:	Senators Hoyle; Atwater, Berger of Franklin, Berger of Rockingham, Bingham, Boseman, Clodfelter, Dalton, Dannelly, Dorsett, Forrester, Garrou, Goodall, Graham, Hagan, Jenkins, Jones, Kerr, Kinnaird, Nesbitt, Purcell, Queen, Rand, Snow, Soles, Stevens, Swindell, and Weinstein.	
Referred to:	Judiciary 1 (Civil).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN EARLIER CONVENING OF THE GENERAL ASSEMBLY FOR A ONE-DAY ORGANIZATIONAL SESSION FOLLOWED BY AN EXTENDED RECESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at ~~12:00 noon~~ 10:00 A.M. on the ~~third Wednesday after the second Monday~~ second business day in January next after their ~~election~~.election, except if that day is a Friday, the session shall instead convene on Thursday, January 2. The Senate and House shall convene that day for a two-day session. When the Senate and House of Representatives adjourn on the second day, they stand adjourned until 12:00 noon on the third Wednesday thereafter."

SECTION 2. This act becomes effective January 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 6
PROPOSED COMMITTEE SUBSTITUTE S6-CSST-12 [v.4]

4/2/2007 9:22:04 AM

Short Title: Early Organizational Session. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN EARLIER CONVENING OF THE GENERAL ASSEMBLY FOR AN ORGANIZATIONAL SESSION FOLLOWED BY AN EXTENDED RECESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-11.1 reads as rewritten:

§ 120-11.1. Time of meeting.

The regular session of the Senate and House of Representatives shall be held biennially beginning at ~~12:00 noon~~ 10:00 A.M. on the ~~third Wednesday after the second~~ first Monday in January next after their ~~election.~~ election for the purpose of electing officers and rules ~~of the house.~~ If the first Monday is a holiday, the regular session shall be held at 10:00 A.M. on the first business day after the first Monday in January. The Senate and House of Representatives shall adjourn from that session no later than three days after the convening of that session, and stand adjourned until 12:00 noon on the third Wednesday thereafter."

SECTION 2. This act becomes effective January 1, 2009.

SENATE BILL 6:
Early Organizational Session

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	April 2, 2007
Introduced by:	Sen. Hoyle	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S6-CSST-12 v4		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 6 would provide for an early organizational session of in each odd-numbered year. The early organizational session would be no more than 3 days, and would be for the purpose of electing officers and rules.***

CURRENT LAW: Section 11 of Article II of the North Carolina Constitution provides that the General Assembly shall convene regular sessions on the day prescribed by law. Neither chamber may proceed upon public business unless a majority of its members are actually present. The General Assembly convenes in the odd-numbered years at 12:00 noon on the third Wednesday after the second Monday of January. G.S. 120-11.1.

Section 20 of Article II of the North Carolina Constitution provides that the two chambers may jointly adjourn to any future day or other place. Of its own motion, either chamber may adjourn for three days or less.

BILL ANALYSIS:

The proposed committee substitute would add an early organizational session, of no more than 3 days, beginning the first Monday in January of the odd-numbered years. If the first Monday fell on a holiday, the early organizational session would begin on the first business day thereafter. The early organizational session would close no more than 3 days after its convening. Under the proposed committee substitute, the earliest the early organizational session would begin would be January 2nd, and the latest would be January 7th.

The purpose of the early organizational session would be to elect officers and adopt rules.

Upon conclusion of the two-day early organizational session, the General Assembly would stand adjourned until 12:00 noon on the third Wednesday after the organizational session.

EFFECTIVE DATE: Effective January 1, 2009.

S0006e1-SMST-PCS55309-LB-2

S0006e1-SMST-CSST-12 v4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 6

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

S6-AST-4 [v.1]

Date _____,2007

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

Senator Stevens

moves to amend the bill on page 1, line11 by inserting the phrase "adopting" between "and" and "rules" on that line.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment 5

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 6 _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen) Rand

1 moves to amend the bill on page 1, line 11

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 deleting the phrase "of the house,".

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SIGNED Tony Rand

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Judy McConnell	IOG
Hayes Holderness	NCGA
Clint Smith	Gens Affirm
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Jeff Rau	Grass Roots NC
Jeff Mixon	Civitas
[illegible]	DSI
[illegible]	Conf. of DAs
[illegible]	Office of Lt. Gov.
Beth Froehling	NCCADV
Octavia Paley	NCFS

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lynice R. Caulfield	NC Fire Sprinkler 3824 Barrett Dr. Raleigh NC 27609
John Madler	NC Sentencing Commission
Patrice Reuter	NCACC
Rebecca Troutman	NCACC
Gary Robertson	AP
Andy Romanet	NCLM
Anita Watkins	NCLM
THOMAS CROWDER	CITY OF RALEIGH
R. Paul Wilms	NCHBA
Rick Techini	NC Assn. of REALTORS
Alastair MacAulay	NCHBA

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LISA MARTIN	NJCHRA
[illegible]	BPMHC
[illegible]	BGA
Sarah Price	DGA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 9

Short Title: DV Order/No Firearm Purchase. (Public)

Sponsors: Senators Boseman; Atwater, Cowell, Dannelly, Goodall, and Jenkins.

Referred to: Judiciary 1 (Civil).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SUBJECT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER IS PROHIBITED FROM PURCHASING A FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) reads as rewritten:

"**§ 50B-3. Relief.**

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.

(3) Require a party to provide a spouse and his or her children suitable alternate housing.

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.

(6) Order either party to make payments for the support of a minor child as required by law.

(7) Order either party to make payments for the support of a spouse as required by law.

(8) Provide for possession of personal property of the parties.

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party.

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.
c. Otherwise interfering with the other party.

(10) Award attorney's fees to either party.

(11) Prohibit a ~~party~~ plaintiff from purchasing a firearm for a time fixed in the order.

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

The protective order shall prohibit the defendant from purchasing a firearm for a time fixed in the order."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 9
PROPOSED COMMITTEE SUBSTITUTE S9-CSRK-6 [v.3]

4/2/2007 11:11:19 AM

Short Title: DV Order/No Firearm Purchase. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SUBJECT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER THAT HAS CAUSED OR ATTEMPTED TO CAUSE BODILY INJURY, OR PLACED PERSONS IN FEAR OF SERIOUS BODILY INJURY, IS PROHIBITED FROM POSSESSING OR PURCHASING A FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3.1 reads as rewritten:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Ex Parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order. If the court finds that the defendant does not own, possess, or otherwise have access to firearms, and the court does not issue an order to surrender firearms under this section, then the court shall, in addition to any other conditions in the order, prohibit the defendant from purchasing or possessing, or attempting to purchase or possess, a firearm while the order is in effect if the defendant:

(1) Attempted to cause, or intentionally caused, bodily injury to the plaintiff or a child living with or in the custody of the plaintiff, or

(2) Placed the plaintiff, or a member of the plaintiff's family or household, in fear of serious bodily injury.

(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration

due to storage or transportation of any firearms or ammunition held pursuant to this section.

(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order.

(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed.

(2) Whether the defendant is subject to any other protective orders.

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

(4) Whether the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or if the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order until the final disposition of those charges.

(g) Motion for Return by Third-Party Owner. – A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items by the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from

regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court;

(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. – This section shall not prohibit law enforcement officers and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter."

SECTION 2. This act becomes effective December 1, 2007, and applies to orders issued on or after that date.

SENATE BILL 9:
DV Order/No Firearm Purchase

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	April 2, 2007
Introduced by:		**Summary by:**	Hal Pell
Version:	PCS to First Edition S9-CSRK		Committee Co-Counsel

SUMMARY: ***The proposed committee substitute would require that a defendant, at a ten-day hearing on a domestic violence protective order, be prohibited from purchasing, or attempting to purchase, a firearm upon specified findings by the court issuing a domestic violence protective order. The act would be effective December 1, 2007, for orders issued on or after that date.***

CURRENT LAW:

- During an *ex parte* hearing, the court is required to ask the plaintiff whether the defendant owns any firearms, or permits, and also any identifying information for the firearms. If the court makes one of findings set forth in G.S. 50B-3.1(a)[set forth in the bill], then the court is required to issue an order that the defendant surrender all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant.
- At the ten-day hearing, the court is required to ask the defendant about possession of, ownership of, or other access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms. If the court orders surrender, then the defendant is also prohibited from possessing or purchasing, or attempting to purchase or possess, firearms as long as the order is in effect.
- A violation of the provision is a Class H felony.

BILL ANALYSIS: The proposed committee substitute would add a provision at the ten-day hearing which would require the court to include in the order a prohibition against possession or purchase, or attempted possession or purchase, of a firearm. If the court finds that the defendant does not own or possess any firearms, it must include the prohibition if it finds one of two following facts:

- That the respondent attempted to cause, or intentionally caused, bodily injury to the plaintiff, or to a minor living with the plaintiff, or
- That the respondent placed the plaintiff, or a member of the plaintiff's family, in fear of serious bodily injury.

A violation of the provision would be a Class H felony.

EFFECTIVE DATE: The act is effective December 1, 2007, and applies to orders issued on or after that date.

S0009e1-SMRK-CSRK

Attachment 9

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 9 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Berger

1 moves to amend the bill on page 2, line 14

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 inserting the phrase "reasonable" between "in"

5 _____

6 and "fear" on that line.

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE JUDICIARY I COMMITTEE
(Civil)

April 5, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, April 5 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Vice Chair R. C. Soles, Sen. Member Charlie Albertson, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Malcolm Graham, Sen. Ellie Kinnaird, Sen. Tony Rand, Sen. Richard Stevens and Sen. Jerry Tillman.

The meeting was called to order by Chairman Nesbitt at 10:07 a.m. and Sen. Clodfelter was called to speak on Senate Bill 576, a bill offering technical clarification for legislation passed in 2005. This legislation amends laws governing business entities regarding mergers and the authority of board committees. David Wilke of Wyrick, Robbins, Gates and Hunt spoke of the bill. Sen. Brunstetter motioned for favorable report, and motion passed unanimously.

A proposed committee substitute for Senate Bill 1172was then called for discussion by Sen. Nesbitt. Senate Bill 1172, which adds requirements for the restraining of dogs and makes violations of those requirements a Class 1 misdemeanor. The bill limits tethering of dogs to no more than three hours in a 24-hour period on a tether attached to a stationary object and no more than six hours in a 24-hour period on a tether attached to a cable trolley system.

Sen. Cowell, prime sponsor of the bill, explained to the committee that it would have to be proven that an owner intended to hurt the dog and that local ordinances can increase or decrease times of tethering.

Chairman. Nesbitt called John Sauls, an animal control officer. Mr. Sauls said he supported the bill saying chained up dogs are a public health issue as can become a threat to a community.

Sen. Clodfelter asked why the bill called for tethering limits of three and six hours. "People would like to let their dogs out while trying to go to work," Sen. Clodfelter said.

Professor Reppie of Duke University's animal law program was called by Sen. Nesbitt. He explained that the three hour requirement was pulled from existing legislation in California and the six hour requirement was pulled from existing legislation in New York.

Sen. Clodfelter said that there "is no scientific reason" for the hour requirements. "Why not make it eight or nine hours ... if nine is okay, say nine is okay."

Sen. Soles asked if provisions were provided for hunting and other dogs that would be kept in a pen. The bill provides exemptions for dogs engaged for shepherding or herding livestock; dogs used to cultivate agricultural products if a restraint is necessary for the dog's safety or hunting dogs.

Sen. Tillman asked how the restrictions could be enforced. Chairman Nesbitt replied "you can see how it's enforced ... a neighbor will turn you in."

Sen. Kinniard said she favored including an eight to ten hour tethering requirement, adding that "not everyone can afford a fence."

Chairman Nesbitt said that the committee would not vote for favorable report at this meeting.

Sen. Brunstetter commented that lots of local governments do not have the resources to enforce such legislation.

Chairman Nesbitt pulled the bill and the bill received neither favorable nor unfavorable report.

Sen. Clodfelter was again called to discuss a proposed committee substitute for Senate Bill 693; the PCS allows for the enforcement of provisions for reciprocal attorney fees in business contracts. This PCS adds a new stature to Chapter 6 of the General Statutes reading that reciprocal attorney's fees (when agreed in a business contract that if suit or arbitration occurs the valid party's attorneys' fees are paid by the liable party) provisions in business contracts are enforceable.

Sen. Clodfelter motioned for approval of the PCS. The motion passed unanimously.

The meeting was adjourned at 10:47 a.m.

Copies of SB 576, Bill Digest for S576, SB 1172, proposed committee Substitute for SB 1172, Analysis for SB 1172, SB 693, proposed committee substitute for SB 693, and the Analysis for SB 693 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, and 8

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 576

Short Title:	Business Entity Clarifications.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary 1 (Civil).	

March 7, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING BUSINESS ENTITIES TO MAKE VARIOUS CLARIFYING AND TECHNICAL CHANGES REGARDING MERGERS AND THE AUTHORITY OF BOARD COMMITTEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-8-25(e) reads as rewritten:

"(e) A committee shall not, however, do any of the following:

(1) Authorize ~~distributions.~~ or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors.

(2) Approve or propose to shareholders action that this act requires be approved by shareholders.

(3) Fill vacancies on the board of directors or on any of its committees.

(4) Amend articles of incorporation pursuant to G.S. 55-10-02.

(5) Adopt, amend, or repeal bylaws.

(6) Approve a plan of merger not requiring shareholder approval."

SECTION 2. G.S. 55-11-10(e)(6) reads as rewritten:

"(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the ~~articles~~ plan of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of this Chapter; and".

SECTION 3. G.S. 55A-11-09(e)(6) reads as rewritten:

"(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to

the rights provided to them in the ~~articles~~ plan of merger or, in the case of former holders of shares in a domestic business corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and".

SECTION 4. G.S. 57C-9A-23(a)(6) reads as rewritten:

"(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the ~~articles~~ plan of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and".

SECTION 5. G.S. 59-73.33(a)(5) reads as rewritten:

"(5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests ~~in each merging business entity~~ are entitled only to the rights provided to them in the ~~articles~~ plan of merger or, in the case of former holders of shares in a domestic ~~corporation (as defined in G.S. 55-1-40),~~ corporation, as defined in G.S. 55-1-40, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and".

SECTION 6. G.S. 59-1073(a)(6) reads as rewritten:

"(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the ~~articles~~ plan of merger or, in the case of former holders of shares in a domestic corporation as defined in G.S. 55-1-40, any rights they have under Article 13 of Chapter 55 of the General Statutes; and".

SECTION 7. The Revisor of Statutes may cause to be printed all explanatory comments of the drafters of the act as the Revisor deems appropriate.

SECTION 8. This act is effective when it becomes law.

March 6, 2007

S 576. BUSINESS ENTITY CLARIFICATIONS. Filed 3/6/07. *TO AMEND THE LAWS GOVERNING BUSINESS ENTITIES TO MAKE VARIOUS CLARIFYING AND TECHNICAL CHANGES REGARDING MERGERS AND THE AUTHORITY OF BOARD COMMITTEES.*

Amends GS 55-8-25(e) to clarify restrictions on actions of board committees to include approving distributions, except as prescribed by the board of directors (was, restriction on authorizing distributions). Otherwise makes technical and conforming changes.

Intro. by Clodfelter. GS 55, 55A, 57C, 59

August 27, 2007

SL 2007-385 (S 576). BUSINESS ENTITY CLARIFICATIONS. *AN ACT TO AMEND THE LAWS GOVERNING BUSINESS ENTITIES TO MAKE VARIOUS CLARIFYING AND TECHNICAL CHANGES REGARDING MERGERS AND THE AUTHORITY OF BOARD COMMITTEES.* Summarized in *Daily Bulletin* 3/6/07. Enacted August 19, 2007. Effective August 19, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1172

Short Title:	Restraining of Dogs.	(Public)
Sponsors:	Senator Cowell.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL LAW CONCERNING RESTRAINING OF DOGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-362.3 reads as rewritten:

"**§ 14-362.3. Restraining dogs in a cruel manner.**

(a) A person who ~~maliciously~~ knowingly restrains a dog using a chain or wire ~~grossly in excess of the size necessary to restrain the dog safely~~ or other type of tethering device in violation of this section is guilty of a Class 1 misdemeanor. ~~For purposes of this section, "maliciously" means the person imposed the restraint intentionally and with malice or bad motive.~~

(b) No person shall tether, fasten, chain, tie, or restrain a dog, or cause such restraining of a dog, to a tree, fence, post, dog house, or other stationary object for more than three hours in a 24-hour period. During periods of tethering that are not unlawful under this subsection, any tethering device used shall be at least 15 feet in length and attached in such manner as to prevent strangulation or other injury to the dog and entanglement with objects other than the stationary objects to which the device is attached.

(c) No person shall tether, fasten, chain, tie, or restrain a dog, or cause such restraining of a dog, to a cable trolley system, that allows movement of the restraining device, for more than six hours in a 24-hour period. During periods of tethering that are not unlawful under this subsection, the length of the cable along which the tethering device can move must be at least 10 feet, and the tethering device must be of such length that the dog is able to move 10 feet away from the cable perpendicularly.

(d) No person shall attach a chain or wire or other tethering device to, or cause such attachment to, a choke-type or pronged collar on a dog.

(e) No person shall attach a chain or wire or other tethering device to a dog in such manner that does not allow the dog access to water and shelter.

(f) Notwithstanding the provisions of subsections (b) and (c) of this section, a person may, subject to the provisions of subsections (d) and (e) of this section:

(1) Tether and restrain a dog while actively engaged in:

a. Use of the dog in shepherding or herding livestock, or

b. Use of the dog in the business of cultivating agricultural products, if the restraining is reasonably necessary for the safety of the dog, or

c. Use of the dog in lawful hunting activities if the restraint is reasonably necessary for the safety of the dog.

(2) After taking possession of a dog that appears to be a stray dog and after having advised animal control authorities of the capture of the dog, tether and restrain the dog during such time as the person having taken possession of the dog is seeking the identity of the owner of the dog.

(3) Walk a dog with a handheld leash.

(g) A county, city, or town may by ordinance:

(1) Reduce the time of permissible tethering provided in subsections (b) and (c) of this section, including a prohibition on tethering.

(2) Increase the permitted time for tethering on a rope or chain provided in subsection (b) from three to as many as nine hours.

(3) Increase the permitted time for tethering on a pulley system provided in subsection (c) from six to as many as twelve hours in any 24-hour period.

(h) Restraining a dog in a manner prohibited by this section constitutes cruelty as defined in G.S. 19A-1(2)."

SECTION 2. This act becomes effective December 1, 2007, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1172
PROPOSED COMMITTEE SUBSTITUTE S1172-CSTC-8 [v.2]

4/4/2007 3:37:12 PM

Short Title: Restraining of Dogs. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL LAW CONCERNING RESTRAINING OF DOGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-362.3 reads as rewritten:

"**§ 14-362.3. Restraining dogs in a cruel manner.**

(a) A person who ~~maliciously~~ knowingly restrains a dog using a chain or wire ~~grossly in excess of the size necessary to restrain the dog safely~~ or other type of tethering device in violation of this section is guilty of a Class 1 misdemeanor. ~~For purposes of this section, "maliciously" means the person imposed the restraint intentionally and with malice or bad motive.~~

(b) No person shall tether, fasten, chain, tie, or restrain a dog, or cause such restraining of a dog, to a tree, fence, post, dog house, or other stationary object for more than three hours in a 24-hour period. During periods of tethering that are not unlawful under this subsection, any tethering device used shall be at least 15 feet in length and attached in such manner as to prevent strangulation or other injury to the dog and entanglement with objects other than the stationary objects to which the device is attached.

(c) No person shall tether, fasten, chain, tie, or restrain a dog, or cause such restraining of a dog, to a cable trolley system, that allows movement of the restraining device, for more than six hours in a 24-hour period. During periods of tethering that are not unlawful under this subsection, the length of the cable along which the tethering device can move must be at least 10 feet, and the tethering device must be of such length that the dog is able to move 10 feet away from the cable perpendicularly.

(d) No person shall attach a choke, pinch, or other type of collar primarily designed to pressure the neck of a dog, or cause such attachment to, a chain or wire or other tethering device which is affixed to a stationary object.

(e) No person shall attach a chain or wire or other tethering device which is affixed to a stationary object to a dog in such manner that does not allow the dog access to water and shelter.

(f) Notwithstanding the provisions of subsections (b) and (c) of this section, a person may, subject to the provisions of subsections (d) and (e) of this section:

(1) Tether and restrain a dog while actively engaged in:

a. Use of the dog in shepherding or herding livestock, or

b. Use of the dog in the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog, or

c. Use of the dog in lawful hunting activities, if the restraint is reasonably necessary for the safety of the dog.

(2) After taking possession of a dog that appears to be a stray dog and after having advised animal control authorities of the capture of the dog, tether and restrain the dog during such time as the person having taken possession of the dog is seeking the identity of the owner of the dog.

(3) Walk a dog with a handheld leash.

(g) A county, city, or town may by ordinance:

(1) Reduce the time of permissible tethering provided in subsections (b) and (c) of this section, including a prohibition on tethering.

(2) Increase the permitted time for tethering on a rope or chain provided in subsection (b) from three to as many as nine hours in any 24-hour period.

(3) Increase the permitted time for tethering on a cable trolley system provided in subsection (c) from six to as many as twelve hours in any 24-hour period.

(h) Restraining a dog in a manner prohibited by this section constitutes cruelty as defined in G.S. 19A-1(2)."

SECTION 2. This act becomes effective December 1, 2007, and applies to acts committed on or after that date.

SENATE BILL 1172: Restraining of Dogs

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 5, 2007
Introduced by:	Sen. Cowell	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to First Edition S1172-CSTC		

SUMMARY: Senate Bill 1172 would add requirements for the restraining of dogs and would make the violation of those requirements a Class 1 misdemeanor. The bill would limit tethering of dogs as follows:

- ***No more than 3 hours in a 24 hour period on a tether attached to a stationary object.***
- ***No more than 6 hours in a 24 hour period on a tether attached to a cable trolley system.***

The PCS makes minor technical changes, including clarification as to the type of collar which may not be used when tethering.

CURRENT LAW: G.S. 14-362.3 currently regulates restraining of dogs in a cruel manner, making it a Class 1 misdemeanor to maliciously restrain a dog using a chain or wire grossly in excess of the size needed to restrain the dog safely. Maliciously is defined by the statute to mean that the restraint was imposed intentionally and with malice or bad motive.

BILL ANALYSIS: Senate Bill 1172 would remove from G.S. 14-362.3 the requirement that the restraint be done maliciously, and the requirement that the size of the chain or wire used be grossly excessive to what is necessary to safely restrain the dog.

Requirements for Restraint

Senate Bill 1172 would make the knowing violation of the following requirements a Class 1 misdemeanor:

- A dog cannot be tethered or otherwise restrained to a stationary object for more than 3 hours in a 24 hour period. During lawful periods of tethering, the tethering device must be 15 feet long and attached so as to prevent strangulation or entanglement with other objects.
- A dog cannot be tethered or otherwise restrained to a cable trolley system for more than 6 hours in a 24 hour period. During lawful periods of tethering, the length of cable allowing movement must be at least 10 feet long, and the tethering device must allow the dog to move 10 feet away from the cable perpendicularly.
- A tether affixed to a stationary object may not be attached to a choke or pinch type collar used to pressure the neck of the dog.
- A dog must not be tethered in such a manner as will prevent access to water and shelter.

Exceptions

Senate Bill 1172 would provide the following exceptions to the time limit requirements:

- A dog may be tethered and restrained while actively engaged in use for:
  - Shepherding or herding livestock.

- Cultivating agricultural products if the restraint is reasonably necessary for the dog's safety.
- Lawful hunting activities if the restraint is reasonably necessary for the dog's safety.

- After animal control authorities have been notified of the dog's capture, a stray dog may be tethered and restrained while seeking to identify the dog's owner.
- A dog may be walked with a handheld leash.

Local Variances

Senate Bill 1172 would permit variance by local ordinance of the time limit requirements as follows. A county, city, or town could:

- Reduce the permissible time of tethering, including a prohibition on tethering.
- Increase the permissible time for tethering to a stationary object from 3 to as many as 9 hours in a 24 hour period.
- Increase the permissible time for tethering to a cable trolley system from 6 to as many as 12 hours in any 24 hour period.

Cruelty for Civil Remedies

Senate Bill 1172 would provide that restraint in a manner prohibited by this bill would constitute cruelty as defined in G.S. 19A-1(2), the definition of cruelty for the Article providing civil remedies for the protection of animals.

EFFECTIVE DATE: This bill would become effective December 1, 2007 and would apply to acts committed on or after that date.

S1172e1-SMTC-CSTC

SB 1172 - REGULATE DOG TETHERING

Before the Senate Judiciary 1 Committee

SUMMARY:

- Present law: G.S. 14-362.3 now requires proof of malice against a dog to obtain misdemeanor conviction for tethering with heavy chains or ropes
- SB 1172 amends G.S. 14-362.3 to
  - — require proof of no more than a knowing violation
  - — create a local option allowing cities and counties to permit tethering for up to 12 hours in a 24-hour period
  - — validate existing local ordinances that ban or restrict tethering of dogs, and
  - — create a statewide ban in absence of local ordinances of 3 or 6 hours of tethering in a 24-hour period depending on the type of restraint.

SB 1172 MERITS A FAVORABLE REPORT

- Tethered dogs are very dangerous and aggressive; they feel threatened when approached because they cannot escape[1]
- 25 % of dog attacks are by dogs on tether or those who've escaped a tether[2]
- 50% of victims of such attacks are children
- Children can freely approach tethered dogs, who are almost never fenced in
- The "malice" requirement of current § 14-362.3 forces courts to interpret local tethering ordinances to make them ineffective[3]

* *

Concerning the last point above: the local ordinances do not state what the "mental element" of the tethering violation is. Ordinarily courts would imply that the prosecutor has to prove the violation was "knowing." But since the General Assembly chose "malice" as the mental element for G.S. 14-

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[1] www.hsus.org/pets; www.helpinganimals.comga_chained_why.asp

[2] Study by Karen Delise, Nat'l Canine Research Foundation. Also: U.S. Center for Disease Control Weekly Report, May 30, 1997 (22%).

[3] Affected ordinances include: Roanoke Rapids City § 91-22 (total ban); Scotland County § 91.22 and Laurinburg city § 4-21 (ban except for 1 in 24 hrs); Holly Springs town § 12-65(c)(b) (ban for period potentially harmful to dog).

362.3, a ban on some kinds of tethering of dogs, courts will very likely borrow from that statute the "malice" standard to be implied into local anti-tethering ordinances. A prosecutor will almost never be able to convince a judge that a dog was tethered to cause him pain rather than to prevent his escape. For the same reason, § 14-362.3 as now worded is really a useless statute.

Reports of Attacks by Chained Dogs

Toddler Attacked by Pit Bull (http://rdu.news14.com)

March 9, 2007, DURHAM, N.C. -- A 3-year-old girl in Durham was hospitalized Tuesday after being attacked by a pit bull in her backyard. Authorities say even though the dog was chained, the girl got too close to the dog. She suffered injuries to the face and head. Fortunately, a man working at a home across the street came to her rescue. "Actually, I just ran up and kicked the dog first and then I grabbed the post," Jaimie Gunter said, "Just do what you got to do." Now a community organization wants to ban dog chaining in Durham and Orange counties. The Coalition to Unchain Dogs says it is a cruel practice and causes dogs to be more aggressive.

Toddler Mauled by Family Dog (www.sptimes.com)

March 1, 2007, PLANT CITY, FLORIDA - A 69-year-old great-grandmother fought off a pit bullterrier that severely injured her 2-year-old great-grandson Wednesday night, authorities said. The boy, Ian Keo, was bitten in the head and neck by Mongo, a family dog that was chained behind a shed in the family's back yard, according to the Hillsborough County Sheriff's Office. The toddler was flown by helicopter to Tampa General Hospital, where he was in critical condition late Wednesday with extensive injuries, said sheriff's spokesman J.D. Callaway.

Boy Attacked by Labrador Retriever (www.9news.com)

February 21, 2007 ERIE, COLORADO – Police shot and killed a family dog after it attacked and severely injured a 9-year-old boy on Monday. According to Jolliff, her son, Josh, was playing outside when he heard Gordie whining while chained up. "He just started doing his puppy whining. Josh went over to pet him, to reassure him, 'It's okay.' The dog just snapped," said Jolliff. The dog attacked, biting the right side of his head, left shoulder and left hand, Jolliff says. "Josh has thousands of stitches to his head, I would say," said Jolliff. "His scalp was hanging on by the skin around his ear on the right side."

Father Arrested After Dog Attack (www.wluctv6.com)

January 10, 2007, NEWBERRY, MICHIGAN - Charges have been filed against the father of the three-year-old Newberry girl who was mauled by a family dog last week. Twenty-seven-year-old Corey Wass of Newberry is charged with second degree felony child abuse. The prosecutor says the father failed to properly supervise the girl. Authorities say the young girl wandered outside while the father was sleeping and was mauled by a rottweiler chained in the yard.

A Bite for Survival (www.baynews9.com)

September 17, 2006, TAMPA BAY, FL - The scars and 100 stitches are the visual image, but the nightmare may take a while to filter from Danielle Nelson's memory. Still, Nelson is thankful to have survived a brutal attack by a rottweiler and saved her goddaughter's life in the process. "You couldn't see nothing but my vein and my bone and the tissue," Nelson said of the Friday attack by the 90-pound rottweiler. The rottweiler that's normally chained up behind this fence broke loose and went after Nelson. "I had to drag him with the gate and he still had my arm in his mouth and he wouldn't let go," Nelson said.

15-Month-Old Killed by Family's Pit Bull (www.clarionledger.com)

June 20, 2006, CONEHATTA, MISSISSIPPI— A few months ago, Newton County resident Pat May saw the pit bull that killed 15-month-old Javlyin Anderson running loose in her pasture. The dog had freed itself from the tree where the girl's parents kept it chained. Javlyin was buried Monday.

Pit Bull in Fatal Attack Euthanized (www.mysanantonio.com)

January 19, 2006 - SAN ANTONIO, TEXAS - Sitting crestfallen inside Animal Care Services on Thursday, Jesse Banda knew his dog had to die. Six days earlier, the pit bull had fatally mauled his neighbor Amber Jones. An animal lover, the 10-year-old girl was bitten in the neck and stomach as she tried to free the dog from Banda's chain-link fence. The pit bull had leaped over it and gotten hooked by his collar, the victim's relatives said. Banda said Chuey could "easily" leap over his chain-link fence, so he kept the dog chained to a tree whenever he and his wife were away. No one was at the Banda home when Amber Jones was attacked, he said. It's unclear if the pit bull was chained when the attack occurred, said Lisa Norwood, spokeswoman for Animal Care Services. James Crosby, a canine aggression expert, said keeping a dog chained could make it more aggressive — a warning echoed by Hale, who added that owners of powerful dogs should take safeguards seriously.

Family Speaks After Girl Attacked By Dog (www.kcci.com)

April 24, 2006, DES MOINES, Iowa -- A dog attack seriously injured a Des Moines girl and left her family angry that something like this could happen. "It's very emotional. I haven't slept at all," said Jennifer Odell-Manuel, the daughter's mother. "She's an innocent little girl playing in her yard. The dog broke its chain and attacked her," Odell-Manuel said. "She's afraid of dogs. She said that the dog tore Kiera's ear off in the attack.

Dog Bite Victim Recovering (www.newarkadvocate.com)

April 25, 2006, NEWARK, OHIO -- A 5-year-old girl needed more than 300 stitches to begin the healing process on her wounded face after a family dog attacked her Saturday. The dog, a 2-year-old boxer owned by Kindred's aunt, Dawn Ridenbaugh, was euthanized Monday morning. The dog had been chained in the back yard.

Another Dog Attack Raises Questions (www.nwitimes.com)

April 18, 2006, LAKE STATION, INDIANA -- A 5-year-old Lake Station girl was attacked by a pit bull mix Friday afternoon while playing with other dogs in a neighbor's yard, Lake Station Police Chief Mike Stills said Monday. Stills said the girl and a neighbor were playing with one of three dogs chained up in the yard in the 2500 block of 35th Street near Wisconsin Avenue.

JPD Officer Attacked by Dog (www.wlbt.com)

April 5, 2006, JACKSON, MISSISSIPPI -- A Jackson Police officer is recovering after being attacked by a dog. The officer was on patrol in the Farish Street district when he found himself pulled to the ground by an angry dog, and officers say these attacks are not uncommon. The officer was attacked when he rounded the corner of a home on Blair Street while attempting to return a stolen purse to its owner. Instead of finding the homeowner, he ran right into the path of an angry dog, chained up but within biting distance.

Shafter Toddler Recovering After Dog Mauling (www.TurnTo23.com)

March 3, 3006, SHAFTER, CALIFORNIA -- A 3-year-old playing in the front of her Shafter home on Monday was attacked by a pitbull. She was unsupervised. A man who was at the home when the attack happened, says he went outside to find Jessica Laux with blood all over her eye. He says she is at an L.A hospital and will undergo surgery for nerve damage to her face and plastic surgery. The witness says the dog was chained up and believes it was eating in the corner when Jessica approached it and was attacked.

Mom Talks About Daughter's Dog Attack (www.kotv.com)

January 26, 2005 - KANSAS, OK -- Her 2-year-old daughter was mauled by a neighbor's pit bull. "It happened so fast." Stephanie Crittenden says she and her two daughters were at her cousin's.... While Stephanie was gathering up her 7-month-old, 2-year-old Cianna went next-door where the neighbor's dog, a pit bull mix, was chained to a tree. Stephanie says she heard Cianna screaming. "That's when I saw my baby getting tossed and turned." Stephanie says she ran toward the dog and grabbed the chain. "And pulled the dog back and it still wouldn't let go of her, and you could smell the blood. And I stuck my hand in its mouth and started pulling back and finally he released her and she fell to the ground." Cianna had deep bites on her face, head, and neck, which reached her spinal cord.

Child Injured in Dog Attack (www.enewscourier.com)

November 28, 2005, ATHENS, ALABAMA -- An 11-year-old Athens boy was injured and hospitalized Saturday afternoon after he was attacked and bitten on the face by a pit bulldog. "People were outside looking at the dog which was chained and the child went to pet the animal when the dog attacked him," said McNatt. "The boy was bitten on the face and required a number of stitches at the emergency room. The child later had to undergo surgery."

Toddler Bitten by Dog (www.fergusfallsjournal.com)

August 16, 2005, FERGUS FALLS, MINNESOTA -- A 2-year-old boy living at the Lakeview Estates Trailer Homes in Fergus Falls was sent to the hospital Monday night and received six stitches for wounds to his face and neck after he was allegedly attacked by a dog. Fergus Falls police said the boy wandered over to a neighbor's yard where he was bitten by a collie mix that was chained in the front yard.

Owner of Dog That Bit Toddler Is Ticketed (www.belleville.com)

June 08, 2005, NEW ATHENS, ILLINOIS - The owner of a pit bull that bit a toddler was issued three city ordinance violations by police on Tuesday. The court date has been set for Justin Hock for July. Hock's pit bull, Zena, bit 22-month-old Mike "Mikey" Kilgore on May 18, tearing the toddler's lip and mouth open and puncturing his head. Hock was not home during the dog attack. Mikey went to pet Zena, who was chained outside in the parking lot of the boy's apartment complex, when the dog snapped.

Animal Control Seizes Dog After Boy Bitten (www.TheKansasCityChannel.com)

June 1, 2005, KANSAS CITY, MISSOURI -- Animal Control officers seized a dog Wednesday after a boy was bitten in the 5800 block of North Jarboe. "We just heard some screams and we went running down the street and I found this boy bleeding like crazy," neighbor Alex Gonzalves said. "I put some compresses on his head because there was a pretty big gash. What really scared me was that he had trouble breathing. That was very, very bad." Neighbors called 911. They told KMBC that they don't remember any problems with the animal. Police found the dog chained up near a dog house in its owner's back yard.

Formerly Chained Foster Dog Attacks Founder of Anti-Chaining Nonprofit
(see www.mothersagainstdogchaining.org)

1 March, 2007, Altoona, PA — Dogs Deserve Better founder Tammy Sneath Grimes was attacked in her home in Tipton, Pennsylvania, on the morning of February 28th, 2007 by a recent foster dog from Ohio. Cyclone, an unneutered and unsocialized black chow chow, had been rescued from chains only three weeks previously, and had been neutered by Dogs Deserve Better February 16th. Grimes suffered multiple lacerations, the worst of which was on her left ankle, 5 inches long and 1 inch deep. She was also bitten on her left arm and chest. Grimes states, "I've been bitten before, but this attack was different, terrifying. Cyclone meant to do tremendous damage, and I feel blessed that my condition is not worse than it is. Unfortunately, Cyclone is a product of our societal mistakes; an unneutered male dog, left chained for life and unsocialized with humans, may be exceedingly dominant in personality. He may not understand that humans are meant to be pack leaders, and he may have no fear of attacking even the human who is caring for him.

Don't Leave Kids, Dogs Alone Together (www.app.com)

February 26, 2007, ASBURY PARK, NEW JERSEY - They may be man's best friend, but 800,000 times each year in the United States, dogs bite someone, resulting in more than 380,000 trips to the emergency room, according to the U.S. Centers for Disease Control and Prevention. Be wary of dogs that are chained outdoors, Goldfarb added. "They are three times more likely to bite than other dogs," he said, presumably because of their isolation.

M. W. FOX, D. SC., PH.D., B. VET. MED., M.R.C.V.S.

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APRIL 2, 2007

CONCERNING THE OUTDOOR CHAINING/TETHERING OF DOGS

As a veterinarian, member of the American Veterinary Medical Association, the British Veterinary Medical Association, and with doctoral degrees in medicine and also animal behavior/ethology, and with 45 year's experience doing research in animal health and well-being, I wish to offer my professional opinion on the outdoor tying up of dogs.

The common practice in many communities, where it is not yet forbidden under local ordinance, or is accepted with strictly specified time-restrictions and effective inspections and enforcement by animal control authorities, of keeping one or more dogs restrained on a chain or other material such as a wire cable or rope, is unacceptable for several reasons. Regardless of whether the dog has adequate shade and shelter and is provided water and sufficient freedom of movement so as not to become tangled or hung, being kept out on a chain/tether affects the flight and critical distance reactions of dogs.

The longer and more frequently a dog is kept outdoors under such restraint, the more the dog's behavior will change. Normal flight and critical (attack) distances are disrupted by such restraint, making friendly dogs more likely to become aggressive when approached by a stranger; turning timid dogs into so-called fear-biters; and aggressive dogs into dangerous animals.

The longer and more frequently a dog is so restrained, the more behavioral abnormalities or pathologies are likely to develop from a combination of being physically, behaviorally and psychologically confined to a life-space dictated by the length of the constraining tether. Signs of behavioral pathology, that are indicative of stress and emotional distress, include stereotypic (repetitive, obsessive-compulsive) pacing, spinning, running to and fro, frenzied chewing to get free; and displacement behaviors such as digging, and excessive self-licking, even to the point of self-mutilation. Many such dogs bark and whine incessantly, resulting in cruel retribution when neighbors complain, or no less cruel surgical de-vocalization.

The suffering of dogs chained outdoors, extremes of weather not withstanding, is compounded by the fact that the dog is a pack animal and wants to be with his or her family and 'master' in the house. Such emotional/social deprivation is in many instances intensified by the outdoor dog seeing one or more pet dogs in the house who are never chained outside.

Dogs that are routinely kept chained/tethered outdoors result in the most frequently reported public nuisance complaint for incessant and uncontrolled barking, and worse: Prolonged chaining/tethering can result in permanent changes in dogs' temperaments, making them hyper-excitable and unpredictable when set free. Being tied up outdoors can make for a dangerous

dog, turning a gentle dog into one that is more likely to attack; and a trustworthy and friendly dog into a public safety risk, especially toward children.

I have been consulted on several occasions, and served as an expert witness, for dog-bite cases involving children especially, but also adults, who were injured, in some cases fatally, by their own or neighborhood dogs. The best preventives are proper rearing, socialization, care and handling of dogs, coupled with public education and effective enforcement of anti-cruelty and animal protection laws that include the prohibition of keeping dogs outdoors permanently chained/tethered.

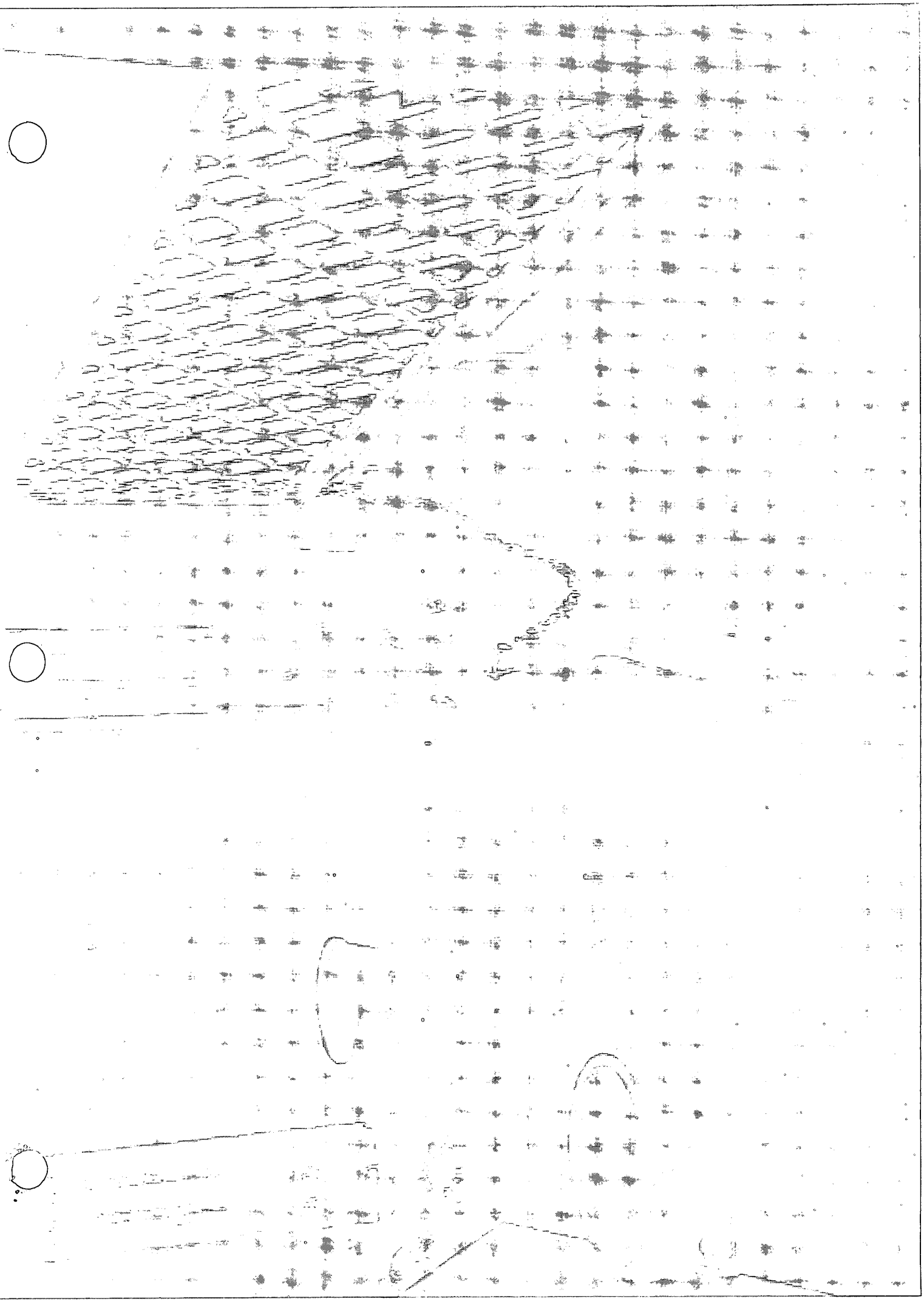


Michael W. Fox B.Vet. Med., Ph.D., D.Sc. M.R.C.V.S.

Biography of Dr. Michael W. Fox

Dr. Michael W. Fox is a veterinarian, lecturer, author, and conservationist and is also the author of more than 40 books. Dr. Fox has appeared on The Tonight Show and has spoken about bioethics and conscious food choices on National Public Radio, The Today Show, and National Geographic Society specials. Fox writes in his book *Understanding Your Dog*, approaching a chained dog will invariably result in a "show of aggression or territorial defense by barking and lunging." He explains that a "dog kept on such a restricted personal territory" may develop a "territorial defense behavior . . . [that is] abnormally intense." Dogs are "fight or flight" animals. When confronted with a threat, a dog's psychology and physiology dictates that he or she will either flee from the danger ("flight") or confront it ("fight"). Because tethered dogs have no ability to flee and escape from danger, they must resort to aggression and attacks. He has served as House Surgeon, Cambridge University, College of Veterinary Medicine, England, January-September 1962; as a post doctoral fellow at Jackson Laboratory, Bar Harbor, ME, 1962-1964; medical research associate, State Research Hospital, Galesburg, IL, 1964-1967; Assistant Professor of Biology and Psychology, 1967-1969; Associate Professor of Psychology, Washington University, St. Louis, MO, 1969-1976; Director, Institute for the Study of Animal Problems, Washington, DC, 1976-1987; Scientific Director, The Humane Society of the United States, Washington, DC, 1980-1987; Director, Center for Respect of Life and Environment, Washington, DC, 1988-1990; Vice President, Bioethics and Farm Animal Protection, The Humane Society of the United States, Washington, DC, 1988-1997; Senior Scholar, Bioethics, The Humane Society of the United States, 1997-2002.

These materials prepared by:
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 693

Short Title:	Attorneys' Fees Provisions/Business Contract.	(Public)
Sponsors:	Senators Clodfelter; and Hartsell.	
Referred to:	Judiciary 1 (Civil).	

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT RECIPROCAL ATTORNEYS' FEES PROVISIONS IN BUSINESS CONTRACTS ARE VALID AND ENFORCEABLE UNDER STATE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is to validate reciprocal attorneys' fees provisions in written contracts that all parties are entering into for business purposes.

SECTION 2. Article 3 of Chapter 6 of the General Statutes is amended by adding a new section to read:

"**§ 6-21.6. Reciprocal attorneys' fees provisions in business contracts.**

(a) As used in this section, the following words or phrases have the listed meanings:

(1) Business contract. – A contract that is primarily for business or commercial purposes and that is not a consumer contract.

(2) Consumer contract. – A contract to which (i) one or more of the parties is a natural person and (ii) the money, property, services, or other subject matter of the contract are primarily for personal, family, or household purposes.

(3) Party or parties. – Signatories or third-party beneficiaries to a contract.

(4) Reciprocal attorneys' fees provisions. – Provisions in any written business contract that essentially provide that, upon the terms and subject to the conditions set forth in the contract, each party shall pay to or reimburse the other parties for the attorneys' fees and expenses incurred by the other parties in connection with any suit, action, proceeding, or arbitration involving the construction, interpretation, enforcement, reformation, or rescission of a business contract.

(b) Reciprocal attorneys' fees provisions in business contracts governed by State law are valid and enforceable for the recovery of reasonable attorneys' fees and expenses.

(c) The presiding judge or arbitrator in any suit or arbitration involving the construction, interpretation, enforcement, reformation, or rescission of a business contract governed by State law shall award reasonable attorneys' fees and expenses in accordance with the terms and conditions of the reciprocal attorneys' fees provisions of the business contract. In determining reasonable attorneys' fees and expenses, the presiding judge or arbitrator may consider relevant facts and circumstances, including:

(1) The time and labor expended by the attorneys.
(2) The novelty and difficulty of the questions raised in the action or proceeding.
(3) The skill required to perform properly the legal services rendered.
(4) The attorneys' opportunity costs in pursuing the litigation.
(5) The customary fee for the type of work performed.
(6) The attorneys' expectations at the beginning of the litigation.
(7) The time limitations imposed by the client or by circumstances.
(8) The amount in controversy and the results obtained.
(9) The experience, reputation, and ability of the attorneys.
(10) The undesirability of the case within the legal community in which the suit arose.
(11) The nature and length of the professional relationship between the attorney and client.
(12) The amount of attorneys' fees awarded in similar cases.

Reasonable attorneys' fees and expenses shall not be governed by any other applicable statutory or contractual provision providing for a stated percentage of the amount at issue or the amount recovered in cases in which the business contract contains reciprocal attorneys' fees provisions.

(d) The party seeking an award of reasonable attorneys' fees and expenses shall have the burden of proving, by a preponderance of the evidence, that the amount sought to be recovered is reasonable, and no presumption shall be employed in favor of or against the reasonableness of the amount sought. Appellate review of an award of reasonable attorneys' fees and expenses shall be by an abuse of discretion standard.

(e) Nothing contained in this section shall in any way make valid or invalid attorneys' fees provisions in consumer contracts or any note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2. Notwithstanding subsection (c) of this section, if a business contract is also a note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and expenses may elect to recover attorneys' fees and expenses either under this section or G.S. 6-21.2, but shall not recover attorneys' fees and expenses under both statutes."

SECTION 3. This act becomes effective October 1, 2007, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 693
PROPOSED COMMITTEE SUBSTITUTE S693-CSST-21 [v.2]

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Short Title: Attorneys' Fees Provisions/Business Contract. (Public)

Sponsors:

Referred to:

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(4) Reciprocal attorneys' fees provisions. – Provisions in any written business contract that essentially provide that, upon the terms and subject to the conditions set forth in the contract, each party shall pay to or reimburse the other parties for the attorneys' fees and expenses incurred by the other parties in connection with any suit, action, proceeding, or arbitration involving the construction, interpretation, enforcement, reformation, or rescission of that business contract.

(b) Reciprocal attorneys' fees provisions in business contracts governed by State law are valid and enforceable for the recovery of reasonable attorneys' fees and expenses.

(c) The presiding judge or arbitrator in any suit, action, proceeding, or arbitration involving the construction, interpretation, enforcement, reformation, or rescission of a business contract governed by State law shall award reasonable attorneys' fees and expenses in accordance with the terms and conditions of the reciprocal attorneys' fees provisions of the business contract. In determining reasonable attorneys' fees and expenses, the presiding judge or arbitrator may consider relevant facts and circumstances, including:

(1) The time and labor expended by the attorneys.
(2) The novelty and difficulty of the questions raised in the action or proceeding.
(3) The skill required to perform properly the legal services rendered.
(4) The attorneys' opportunity costs in pursuing the litigation.
(5) The customary fee for the type of work performed.
(6) The attorneys' expectations at the beginning of the litigation.
(7) The time limitations imposed by the client or by circumstances.
(8) The amount in controversy and the results obtained.
(9) The experience, reputation, and ability of the attorneys.
(10) The undesirability of the case within the legal community in which the suit arose.
(11) The nature and length of the professional relationship between the attorney and client.
(12) The amount of attorneys' fees awarded in similar cases.

Reasonable attorneys' fees and expenses shall not be governed by any other applicable statutory or contractual provision providing for a stated percentage of the amount at issue or the amount recovered in cases in which the business contract contains reciprocal attorneys' fees provisions.

(d) The party seeking an award of reasonable attorneys' fees and expenses shall have the burden of proving, by a preponderance of the evidence, that the amount sought to be recovered is reasonable, and no presumption shall be employed in favor of or against the reasonableness of the amount sought. Appellate review of an award of reasonable attorneys' fees and expenses shall be by an abuse of discretion standard.

(e) Nothing contained in this section shall in any way make valid or invalid attorneys' fees provisions in consumer contracts or any note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2. Notwithstanding subsection (c) of this section, if a business contract is also a note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and expenses may elect to recover attorneys' fees and expenses either under this section or G.S. 6-21.2, but shall not recover attorneys' fees and expenses under both statutes."

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SENATE BILL 693:
Attorneys' Fees Provisions/Business Contract

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 4, 2007
Introduced by:	Sen. Clodfelter	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S693-CSST-21v2		Committee Counsel

SUMMARY: ***Senate Bill 693 would specifically allow enforcement of provisions for reciprocal attorneys' fees in business contracts.***

The proposed committee substitute makes technical and clarifying changes to the first edition of the bill.

BILL ANALYSIS: The proposed committee substitute would add a new statute to Chapter 6 of the General Statutes stating that reciprocal attorneys' fees provisions in business contracts are valid and enforceable.

Reciprocal attorneys' fees provisions are defined as a provision in a written business contract that provide each party shall pay the other parties' attorneys' fees incurred in connection with a suit, action, proceeding, or arbitration involving the construction, interpretation, enforcement, reformation, or rescission of that business contract. A business contract is one that is primarily for business or commercial purposes and is not a consumer contract.

If the business contract contains a reciprocal attorneys' fee provision, the presiding judge or arbitrator shall award reasonable attorneys' fees and expenses in accordance with that provision if the suit, action, proceeding or arbitration is involving the construction, interpretation, enforcement, reformation or rescission of that business contract. In order to determine reasonable attorneys' fees and expenses, the presiding judge or arbitrator may consider relevant facts and circumstances, but may not use a stated percentage of the amount at issue.

The party seeking to recover the attorneys' fees and expenses has the burden of proving, by a preponderance of the evidence, that the fees and expenses sought are reasonable.

If the business contract containing the reciprocal attorneys' fee provision is also a note, conditional sale contract, or other indebtedness governed by G.S. 6-21.2, then the party seeking to recover attorneys' fees and expenses may elect to collect under the reciprocal attorneys' fee provision or G.S. 6-21.2, but not both.

EFFECTIVE DATE: Effective October 1, 2007, and applies to contracts entered into on or after that date.

S0693e1-SMST-CSST-21v1

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 5, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patricia Reeder	NCACC
Kelly [illegible] Mike [illegible] Scott [illegible]	WRAL-TV
Joe + Henri McClees	McClees Consulting
OCTAVIA ROONEY	NC FAIR SHARE
Doug Heron	NC BAR ASSN
David Wilkc	Wyrick Robbins et al.
Steve Petersen	Smith Moore
Mark [illegible]	Ryan A Smith
John Sauls	NC Animal Law Comm
William Reppy	Duke Law School
Christine Wunsche	10G - Daily Bulletin

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 5, 2007

Name of Committee — **Date**

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Alison Roach	DMV
Portia Mabry	NCDOT/DMV
KIRSTIN PETERSEN	NCGA
Johanna Reese	DOT
G. Bowles	Allsmiths & Co.
Cliff Unk	Gas Sta
Lora Piercy	Duke Energy
Dick [illegible]	NCDA
Laura Hall-Read	Sen. Basnight
Russ Dubitsky	IFNC
Lynice L. Gilliam	NC Farm Bureau

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 5, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alander White	Gov. office
Patrick Boffkin	Nelson Mullins
Bill Carpenter	CMOS
John Motley	Gov office?

SENATE JUDICIARY I COMMITTEE
(Civil)

April 10, 2007
10 a.m. -Room 1128

MINUTES

The Senate Judiciary Committee met Tuesday, April 10, 2007 in Room 1128 of the Legislative Building. Senators Present were Committee Chairman Martin Nesbitt, Vice Chair, Phil Berger, Vice Chair Dan Clodfelter, Julia Boseman, Malcolm Graham, David Hoyle, Ellie Kinnaird, Tony Rand, Richard Stevens, and Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:01 a.m. calling on Sen. Rand to speak for Senate Bill 180, a bill that would allow a judge to call on an alternate juror after deliberations have begun. This changes current law which requires a mistrial in the event that a juror is unable to perform or is disqualified after deliberations have begun. Sen. Rand explained the bill and its changes.

Sen. Brown asked Sen. Rand how many alternate jurors a judge can choose and was informed that a judge can choose as many as he wanted. Staff Attorney Erika Churchill explain to the committee that if a judge sequesters a jury, the alternate would have to stay. If not, the alternate could return home.

An amendment was offered by Sen. Rand on page 2, lines 35-36 by inserting the following between those lines:

> "**SECTION 2.1**. G.S. 15A-1221 (a)(10) reads as rewritten:
> '(10) The jury must retire to deliberate, and alternate jurors who have not been seated ~~must~~ may be excused as provided in G.S. 15A-1215.'".

The Amendment was adopted. Sen. Hoyle moved to incorporate the amendment into a committee substitute, give that bill a favorable report, unfavorable to original bill. The motion passed.

Sen. Hoyle was called by Chairman Nesbitt to explain Senate Bill 681 (Firemen's Relief Fund Immunity.-AB), granting qualified immunity to persons serving on the local boards of trustees of the Firemen's Relief Fund of North Carolina. Sen. Rand asked if there was a companion bill in the House and staff advised that there is. The bill is held until the Committee reviews the House version.

The meeting was adjourned at 10:15 a.m. Pages assisting the meeting were Ellen Elmore of Wake Forest and Sherry Royster of Durham.

Copies of Senate 180, Bill Analysis for SB 180, Amendment to SB 180, Senate Bill 681, and the Bill Analysis for SB 681 are attached to these Minutes as Attachments 1, 2, 3, 4, and 5, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 180

Short Title:	Alternate Jurors/Jury Trial Deliberations.	(Public)
Sponsors:	Senators Rand; Brown, Goodall, and Preston.	
Referred to:	Judiciary 1 (Civil).	

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ALTERNATE JUROR MAY REPLACE A JUROR WHO IS UNABLE TO PERFORM THE JUROR'S DUTIES, IS DISQUALIFIED FROM PERFORMING THE JUROR'S DUTIES, OR IS DISCHARGED FOR MISCONDUCT OR OTHER EXTRAORDINARY CAUSE DURING DELIBERATION BY THE JURY ON THE ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-18(a) reads as rewritten:

"(a) Civil Cases. Whenever the presiding judge deems it appropriate, one or more alternate jurors may be selected in the same manner as the regular trial panel of jurors in the case. Each party shall be entitled to two peremptory challenges as to each such alternate juror, in addition to any unexpended challenges the party may have after the selection of the regular trial panel. Alternate jurors shall be sworn and seated near the jury with equal opportunity to see and hear the proceedings and shall attend the trial at all times with the jury and shall obey all orders and admonitions of the court to the jury. When the jurors are ordered kept together in any case, the alternate jurors shall be kept with them. An alternate juror shall receive the same compensation as other ~~jurors and, except as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If before that time~~ jurors. If, before final submission of the case to the jury, 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. If, during deliberations, any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel; however, if an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. If more than one alternate juror has been selected, they shall be available to become a part of the jury in the order in which they were selected."

SECTION 2. G.S. 15A-1215 reads as rewritten:

"**§ 15A-1215. Alternate jurors.**

(a) The judge may permit the seating of one or more alternate jurors. Alternate jurors must be sworn and seated near the jury with equal opportunity to see and hear the proceedings. They must attend the trial at all times with the jury, and obey all orders and admonitions of the judge. When the jurors are ordered kept together, the alternate jurors must be kept with them. If ~~before final submission of the case to the jury,~~ any juror dies, becomes incapacitated or disqualified, or is discharged for any other reason, an alternate juror becomes a juror, in the order in which selected, and serves in all respects as those selected on the regular trial panel. Alternate jurors receive the same compensation as other ~~jurors and, unless they become jurors, must be discharged upon the final submission of the case to the jury.~~ jurors. The court may retain alternate jurors after the jury retires to deliberate. The court shall ensure that a retained alternate juror does not discuss the case with anyone until that alternate juror replaces a juror or is discharged. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberations, an alternate juror may become part of the jury and serve in all respects as those selected on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(b) In all criminal actions in which one or more defendants is to be tried for a capital offense, or enter a plea of guilty to a capital offense, the presiding judge shall provide for the selection of at least two alternate jurors, or more as he deems appropriate. The alternate jurors shall be retained during the deliberations of the jury on the issue of guilt or innocence under such restrictions, regulations and instructions as the presiding judge shall direct. In case of sequestration of a jury during deliberations in a capital case, alternates shall be sequestered in the same manner as is the trial jury, but such alternates shall also be sequestered from the trial jury. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberations, an alternate juror may become part of the jury and serve in all respects as those selected on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. In no event shall more than 12 jurors participate in the jury's deliberations."

SECTION 3. G.S. 15A-1340.16(a1) reads as rewritten:

"(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. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberation on the issue of whether one or more aggravating factors exist, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel; however, if an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. 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."

SECTION 4. G.S. 15A-2000(a) reads as rewritten:

"(a) Separate Proceedings on Issue of Penalty. –

(1) Except as provided in G.S. 15A-2004, upon conviction or adjudication of guilt of a defendant of a capital felony in which the State has given notice of its intent to seek the death penalty, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one which may be punishable by death.

(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberation on the issue of penalty, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel; however, if an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. An alternate juror shall become a part of the jury in the order in which he was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall

impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

(3) In the proceeding there shall not be any requirement to resubmit evidence presented during the guilt determination phase of the case, unless a new jury is impaneled, but all such evidence is competent for the jury's consideration in passing on punishment. Evidence may be presented as to any matter that the court deems relevant to sentence, and may include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (e) and (f) of this section. Any evidence which the court deems to have probative value may be received.

(4) The State and the defendant or his counsel shall be permitted to present argument for or against sentence of death. The defendant or defendant's counsel shall have the right to the last argument."

SECTION 5. G.S. 20-179(a1) reads as rewritten:

"(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating factors. – 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 section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial 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. The State bears the burden of proving 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.

(3) Convening the jury. – 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. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberation on the issue of whether one or more aggravating factors exist, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel; however, if an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. 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.

(4) Jury selection. – 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."

SECTION 6. G.S. 15A-2005 is amended by adding a new subsection to read:

"(f1) The Court may retain alternate jurors after the jury retires to deliberate the issue of mental retardation. The Court shall ensure that any retained alternate juror does not discuss the case with anyone until that alternate replaces a juror or is discharged. If, before final submission of the issue of mental retardation to the jury or during deliberations on that issue, any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew."

SECTION 7. This act becomes effective December 1, 2007, and applies to trials starting on or after that date.

SENATE BILL 180:
Alternate Jurors/Jury Trial Deliberations

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 9, 2007
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 180 allows an alternate juror to become part of the jury after deliberations have begun if a juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations.

CURRENT LAW: Generally, in both civil and criminal cases, judges are authorized to seat alternate jurors in the same manner as jurors. The alternate jurors are to be seated near the jury, with an opportunity to see and hear the proceedings. The alternate jurors are to attend the trial at all times, and obey all orders and admonitions of the judge.

Prior to the final submission of the case to the jury, an alternate juror may fill the seat of a juror that has died, become incapacitated or disqualified, or has been discharged for any reason. If the case is civil, the alternate jurors are dismissed upon the final submission of the case to the jury.

If the case is a capital offense, the judge must appoint alternate jurors, who are retained during jury deliberations.

BILL ANALYSIS: The bill would allow the judge to retain alternate jurors past the final submission of the case to the jury in all civil and criminal cases where alternate jurors are appointed. The alternate juror may become part of the jury after deliberations have begun in the following instances:

- A juror dies.
- A juror becomes incapacitated or is disqualified.
- A juror is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations.

In all instances where an alternate juror becomes part of the jury after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

EFFECTIVE DATE: Effective December 1, 2007, and applies to trials starting on or after that date.

S0180e1-SMST

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 180

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

S180-AST-5 [v.1]

Date _____,2007

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

Senator _____

moves to amend the bill on page 2, lines 35-36 by inserting the following between those lines:

"**SECTION 2.1.** G.S. 15A-1221(a)(10) reads as rewritten:

'(10) The jury must retire to deliberate, and alternate jurors who have not been seated ~~must~~ may be excused as provided in G.S. 15A-1215.' ".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S **2**

SENATE BILL 180

Judiciary I (Civil) Committee Substitute Adopted 4/11/07

Short Title: Alternate Jurors/Jury Trial Deliberations. (Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ALTERNATE JUROR MAY REPLACE A JUROR WHO IS UNABLE TO PERFORM THE JUROR'S DUTIES, IS DISQUALIFIED FROM PERFORMING THE JUROR'S DUTIES, OR IS DISCHARGED FOR MISCONDUCT OR OTHER EXTRAORDINARY CAUSE DURING DELIBERATION BY THE JURY ON THE ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-18(a) reads as rewritten:

"(a) Civil Cases. Whenever the presiding judge deems it appropriate, one or more alternate jurors may be selected in the same manner as the regular trial panel of jurors in the case. Each party shall be entitled to two peremptory challenges as to each such alternate juror, in addition to any unexpended challenges the party may have after the selection of the regular trial panel. Alternate jurors shall be sworn and seated near the jury with equal opportunity to see and hear the proceedings and shall attend the trial at all times with the jury and shall obey all orders and admonitions of the court to the jury. When the jurors are ordered kept together in any case, the alternate jurors shall be kept with them. An alternate juror shall receive the same compensation as other ~~jurors and, except as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If before that time~~ jurors. If, before final submission of the case to the jury, 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. If, during deliberations, any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel; however, if an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. If more than one alternate juror has been selected, they shall be available to become a part of the jury in the order in which they were selected."

SECTION 2. G.S. 15A-1215 reads as rewritten:

"**§ 15A-1215. Alternate jurors.**

(a) The judge may permit the seating of one or more alternate jurors. Alternate jurors

must be sworn and seated near the jury with equal opportunity to see and hear the proceedings. They must attend the trial at all times with the jury, and obey all orders and admonitions of the judge. When the jurors are ordered kept together, the alternate jurors must be kept with them. If ~~before final submission of the case to the jury,~~ any juror dies, becomes incapacitated or disqualified, or is discharged for any other reason, an alternate juror becomes a juror, in the order in which selected, and serves in all respects as those selected on the regular trial panel. Alternate jurors receive the same compensation as other ~~jurors and, unless they become jurors, must be discharged upon the final submission of the case to the jury.~~jurors. The court may retain alternate jurors after the jury retires to deliberate. The court shall ensure that a retained alternate juror does not discuss the case with anyone until that alternate juror replaces a juror or is discharged. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberations, an alternate juror may become part of the jury and serve in all respects as those selected on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(b) In all criminal actions in which one or more defendants is to be tried for a capital offense, or enter a plea of guilty to a capital offense, the presiding judge shall provide for the selection of at least two alternate jurors, or more as he deems appropriate. The alternate jurors shall be retained during the deliberations of the jury on the issue of guilt or innocence under such restrictions, regulations and instructions as the presiding judge shall direct. In case of sequestration of a jury during deliberations in a capital case, alternates shall be sequestered in the same manner as is the trial jury, but such alternates shall also be sequestered from the trial jury. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberations, an alternate juror may become part of the jury and serve in all respects as those selected on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. In no event shall more than 12 jurors participate in the jury's deliberations."

SECTION 2.1. G.S. 15A-1221(a)(10) reads as rewritten:

"(10) The jury must retire to deliberate, and alternate jurors who have not been seated ~~must~~ may be excused as provided in G.S. 15A-1215."

SECTION 3. G.S. 15A-1340.16(a1) reads as rewritten:

"(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. If any juror dies, becomes

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(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberation on the issue of penalty, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel; however, if an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. An alternate juror shall become a part of the jury in the order in which he was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

(3) In the proceeding there shall not be any requirement to resubmit evidence presented during the guilt determination phase of the case, unless a new jury is impaneled, but all such evidence is competent for the jury's consideration in passing on punishment. Evidence may be presented as to any matter that the court deems relevant to sentence, and may include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (e) and (f) of this section. Any evidence which the court deems to have probative value may be received.

(4) The State and the defendant or his counsel shall be permitted to present

argument for or against sentence of death. The defendant or defendant's counsel shall have the right to the last argument."

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"(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating factors. – 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 section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial 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. The State bears the burden of proving 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.

(3) Convening the jury. – 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. If any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations once the jury has begun its deliberation on the issue of whether one or more aggravating factors exist, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel; however, if an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. 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.

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"(f1) The Court may retain alternate jurors after the jury retires to deliberate the issue of mental retardation. The Court shall ensure that any retained alternate juror does not discuss the case with anyone until that alternate replaces a juror or is discharged. If, before final submission

of the issue of mental retardation to the jury or during deliberations on that issue, any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew."

SECTION 7. This act becomes effective December 1, 2007, and applies to trials starting on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 681

Short Title:	Firemen's Relief Fund Immunity.-AB	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Judiciary 1 (Civil).	

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUALIFIED IMMUNITY FOR PERSONS SERVING ON LOCAL BOARDS OF TRUSTEES OF THE FIREMEN'S RELIEF FUND OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 84 of Chapter 58 of the General Statutes of North Carolina is amended by adding a new section to read:

"**§ 58-84-60. Immunity.**

A person serving on a local board of trustees of the Firemen's Relief Fund shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

(1) Was not acting within the scope of that person's official duties;

(2) Was not acting in good faith;

(3) Committed gross negligence or willful or wanton misconduct that resulted in the damages or injury;

(4) Derived an improper personal financial benefit from the transaction; or

(5) Incurred the liability from the operation of a motor vehicle."

SECTION 2. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 3. This act becomes effective October 1, 2007, and applies only to causes of action arising on or after that date.

SENATE BILL 681:
Firemen's Relief Fund Immunity.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 9, 2007
Introduced by:	Sen. Hoyle	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 681 would grant qualified immunity to persons serving on the local boards of trustees of the Firemen's Relief Fund of North Carolina.
[As introduced, this bill was identical to H552, as introduced by Rep. Sutton, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: Article 84 of Chapter 58 provides for the creation, funding, and duties of local Fireman's Relief Funds. Local Fireman's Relief Funds are funded by a portion of an existing tax on gross premiums of fire and lightening insurance, and are governed by a local Fireman's Relief Fund Board of Trustees. The local Firemen's Relief Fund is to be used for:

- To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of duties as a fireman.
- To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or State, either by accident or from disease contracted or injury received by reason of such service.
- To provide assistance, upon approval by the Secretary of the State Firemen's Association, to a destitute member fireman who has served honorably for at least five years.
- To provide for the payment of any fireman's assessment in the Firemen's Fraternal Insurance Fund of the State of North Carolina if the board of trustees finds that the fireman is unable to pay the assessment because of disability.
- To provide for benefits of supplemental retirement, workers compensation, and other insurance and pension protection for firemen otherwise qualifying for benefits from the Firemen's Relief Fund.
- To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the Firemen's Relief Fund.

BILL ANALYSIS: Senate Bill 681 provides that persons serving on local boards of trustees of Fireman's Relief Funds shall be immune from civil liability for monetary damages for any act or failure to act arising out of their service on the Board, except to the extent covered by insurance. The grant of immunity also does not apply in any of the following situations:

1. The trustee was not acting within the scope of the trustee's official duties.
2. The trustee was not acting in good faith.
3. The trustee committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
4. The trustee derived an improper personal financial benefit from the transaction.
5. The trustee incurred the liability from the operation of a motor vehicle.

EFFECTIVE DATE: Effective October 1, 2007, and applies to causes of action arising on or after that date.

BACKGROUND: Examples of similar enacted language:

- Local ABC Boards - G.S. 18B-700(j).
- Directors and officers of nonprofit corporations - G.S. 55A-8-60(a).
- Officers and members of a supreme governing body of a Fraternal Benefit Society - G.S. 58-24-35(d).
- Trustees, directors and officers of religious societies - G.S. 61-1(b).

S0681e1-SMST
Giles Perry contributed to this summary.

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, April 10, 2007
10:00 a.m.
Room 1028

1 Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 180	Alternate Jurors/Jury Trial Deliberations.	Senator Rand
SB 236	Regulation of Professional House Moving .	Senator Jenkins
SB 681	Firemen's Relief Fund Immunity.-AB	Senator Hoyle
SB 793	Strengthen Registration Plate Issuance.	Senator Jenkins
SB 904	General Statutes Technical Correction-1.	Senator Rand
SB 905	General Statutes Technical Correction-2.	Senator Rand

Adjournment.

SENATE JUDICIARY I COMMITTEE
(Civil)

April 17, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, April 17 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Member Charlie Albertson, Senator Julia Boseman, Senator Andrew Brock, Senator Harry Brown, Senator Harry Brunstetter, Sen. Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Tony Rand, Senator Richard Stevens and Senator Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:01 a.m. Sen. Nesbitt adjusted the agenda to hear Senate Bill 1358 (Street Gang Prevention Act) first. Sen. Nesbitt then called on bill sponsor Sen. Graham. The bill has a companion bill in the House and the house representative, Rep. Sutton, was present at the meeting.

Sen. Graham explained the bill noting that the bill does call for $10 million to fund gang prevention programs. Sen. Graham talked of the area of Charlotte he is from, the Hidden Valley area, and introduced Captain Eddie Levins and Det. Fran Cook of the Charlotte Police Department.

Sen. Nesbitt asked if the bill makes it an offense if one is just a member of a gang. Staff responded that it makes it a crime as part of a battery of activities, and that the person must have two offenses. Sen. Nesbitt said that this bill was similar to an organized crime bill. The Chairman then moved to Senate Bill 681/House Bill 552, granting individual immunity to persons serving on Firemen's Relief Fund boards as trustees. A proposed committee substitute for House Bill 552 was introduced and a motion for approval was made by Sen. Hoyle.. Sen. Nesbitt called for discussion. With no discussion, Sen. Hoyle moved for favorable report. The motion passed unanimously.

Sen. Nesbitt returned to Senate Bill 1358, the gang prevention bill, and Sen. Graham called for Detective Cook to address the committee. Cook told a story about a young woman who was recently "beaten into" a Charlotte gang, and who now no longer wanted to participate in the gang. Cook said that the girl was lucky because most young women installed into gangs are "sexed in." "This could be a 13-year-old girl having sex with a 20-year-old, a 27-year-old or a 30-year-old." She told the committee that the bill provides the "things the we (law enforcement) need."

Sen. Kinnaird asked what was in place now and whether there were Boys and Girls Clubs. Cook explained the gangs had a more glamorous appearance. Sen. Albertson asked what the typical profile of a gang member is. Cook replied 16 to 20-years-old and said that gang crimes range from stealing purses to homicide.

Levins told the committee that gangs were trying to attract youth without criminal records and also said that the Charlotte police were trying to go after "the worst of the worst."

Sen. Berger said that he was concerned that wording of the bill could have negative consequences. Sen. Nesbitt responded saying that the committee needed further work with the bill and that he would refer it to subcommittee. Sen. Rand asked if RICO would apply to the bill and Sen. Nesbitt replied that the bill looked like a RICO statute.

Then Laura Sagar, the national campaign director of Families Against Mandatory Minimums spoke on the bill, saying that there were fiscal consequences and also problems with the definition of a "gang." She then said that the bill would hurt people with mental illness and of color.

Sen. Nesbitt asked Staff Attorney Hal Pell to look at the bill on Page 5, Line 36. Pell agreed and the meeting was adjourned at 10:52 a.m.

Senate Bill 1358, proposed Committee Substitute for SB 1358, Bill Analysis for the pcs for SB 1358, Senate Bill 681/House Bill 522, a proposed committee substitute for HB 522, and a Bill Analysis for the pcs to HB 522 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, and 6 respectively.

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1358

Short Title:	Street Gang Prevention Act.	(Public)
Sponsors:	Senators Graham; Albertson, Atwater, Berger of Franklin, Clodfelter, Cowell, Dannelly, Foriest, Jenkins, Jones, Malone, Pittenger, Shaw, Snow, Swindell, Tillman, and Weinstein.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.

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 13A.

"North Carolina Street Gang Prevention Act.

"**§ 14-50.15. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Prevention Act".

"**§ 14-50.16. Legislative findings and intent.**

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Article to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of North Carolina is in a state of crisis that has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The General Assembly finds that there are criminal street gangs operating in North Carolina and that the number of gang-related murders is increasing. It is the intent of the General Assembly in enacting this Article to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which together are the chief source of terror created by street gangs.

(d) The General Assembly finds that prevention of violent gang activity and efforts to prevent violent gangs' ability to recruit additional members are effective means of addressing the issues created by gangs in this State.

(e) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

"**§ 14-50.17. Definitions.**

The following definitions apply in this Article:

(1) 'Criminal street gang' or '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 one or more felony offenses, or delinquent acts that would be felonies if committed by an adult, which has a common name, common identifying sign or symbol, and three or more members individually or collectively engaged in or who have engaged in criminal gang activity.

(2) 'Pattern of criminal gang activity' means the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the following offenses, provided that at least one of these offenses occurred after December 1, 2007, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity:

a. Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).

b. Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

(3) 'Criminal street gang member' means a person to whom two or more of the following criteria apply:

a. Admits to criminal street gang membership;

b. Is identified as a criminal street gang member by a documented reliable informant;

c. Resides in or frequents a particular criminal street gang's area and adopts its style of dress, its use of hand signals or its tattoos and associates with known criminal street gang members;

d. Has been arrested more than once in the company of known criminal street gang members for offenses which are consistent with usual criminal street gang activity;
e. Is identified as a criminal street gang member by physical evidence, such as photographs or other documentation;
f. Has been stopped in the company of known criminal street gang members four or more times;
g. Has been identified as a criminal street gang member by other law enforcement agencies; or
h. Is identified as a criminal street gang member by a parent or guardian.

"**§ 14-50.18. Participation in criminal street gang activity prohibited.**

(a) It is unlawful for any person employed by or associated with a criminal street gang to conduct or participate in the criminal street gang through a pattern of criminal gang activity.

(b) It is unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(c) It is unlawful for any person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity.

(d) It is unlawful for any person to cause, encourage, solicit, or coerce another to participate in a criminal street gang.

(e) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

(f) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

(g) Any person who violates this section shall be punished as follows:

(1) A person who violates subsection (a) or (b) of this section shall, in addition to any other penalty imposed by law, be punished as a Class H felon.

(2) A person who violates subsection (a), (b), (d), (e), or (f) of this section may, if the person also violates subsection (c) of this section in the same course of conduct, in addition to any other penalty provided by law, be punished by imprisonment for an additional 10 years which shall be served consecutively to any other sentence imposed on the person by law.

(3) A person who violates subsection (d), (e), or (f) of this section shall, in addition to any other penalty provided by law, be punished as a Class H felon.

(h) Any crime committed in violation of this section shall be considered a separate offense.

"**§ 14-50.19. Enhanced offense for criminal gang activity.**

Unless a different classification is expressly stated, a person who is convicted of an offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this section.

This section does not apply to the offenses set forth in G.S. 14-50.18.

"**§ 14-50.20. Reports of disposition; criminal street gang activity.**

When a defendant is found guilty of an offense, the presiding judge shall determine whether the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang. If the judge determines that the offense so qualifies, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal street gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes the court's determination.

"**§ 14-50.21. Contraband, seizure, and forfeiture.**

(a) All of the following are declared to be contraband, and no person shall have a property interest in them:

(1) All property that is directly or indirectly used or intended for use in any manner to facilitate a violation of this Article.

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this Article.

(b) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

(c) Within 60 days of the date of the seizure of contraband pursuant to this section, the district attorney or the Attorney General shall initiate a forfeiture proceeding as provided in G.S. 14-2.3.

"**§ 14-50.22. Local ordinances not preempted by State law.**

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

"**§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement.**

Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes. If the property is owned by a person who is not a member of the

criminal street gang, this section shall apply only if the person has knowledge of the criminal gang activity.

"**§ 14-50.24. Matters proved in criminal trial court.**

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct.

"**§ 14-50.25. Applicability to juveniles under the age of sixteen.**

The provisions of this Article shall not apply to juveniles under the age of 16."

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-34.9. Discharging a firearm from within an enclosure.**

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm, as a part of a pattern of criminal gang activity, from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

SECTION 3. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and

not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.17;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.17, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

~~Such person~~ Persons who are considered for bond under the provisions of subsections (d) and (e) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 4. G.S. 15A-1340.16(d) reads as rewritten:

"(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~~G.S. 15A-1340.16A, 15A-1340.16B, or 14-50.19 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."

SECTION 5. Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang, and the defendant possessed, displayed, or discharged a firearm during the commission of the felony.**

(a) Notwithstanding G.S. 15A-1340.16A, a person who is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang as defined in G.S. 14-50.17, and who possessed, displayed, or discharged a firearm during the commission of the felony shall be punished pursuant to one of the following subdivisions:

(1) If the person possessed a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months.

(2) If the person displayed a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 84 months.

(3) If the person discharged a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 120 months.

(b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by possessing, displaying, or discharging the firearm. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(d) The enhanced punishment provided by this section for the acts of possessing or displaying a firearm applies even if the firearm is incapable of firing.

(e) The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the defendant."

SECTION 6. The Revisor of Statutes shall recodify the existing G.S. 15A-1340.16B and subsequent statutes accordingly.

SECTION 7. G.S. 15A-1340.16A(c) reads as rewritten:

"(c) ~~If~~ Except as provided in G.S. 15A-1340.16B, if a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm and (ii) the person actually possessed the firearm about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1)."

SECTION 8. There is appropriated to the Department of Juvenile Justice and Delinquency Prevention the sum of ten million dollars ($10,000,000) for the 2007-2008 fiscal year to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention programs.

The Department of Juvenile Justice and Delinquency Prevention, in conjunction with the Governor's Crime Commission, shall develop the criteria for eligibility for these funds. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile or adult programs that meet the criteria established by the Department of Juvenile Justice and Delinquency Prevention and the Governor's Crime Commission.

The Department of Juvenile Justice and Delinquency Prevention shall report on the uses of these funds no later than April 1, 2008, to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division.

SECTION 9. Section 8 of this act becomes effective July 1, 2007. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 1358
PROPOSED COMMITTEE SUBSTITUTE S1358-CSRK-12 [v.1]

4/10/2007 2:49:59 PM

Short Title: Street Gang Prevention Act. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.

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 13A.

"North Carolina Street Gang Prevention Act.

"**§ 14-50.15. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Prevention Act."

"**§ 14-50.16. Legislative findings and intent.**

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Article to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of North Carolina is in a state of crisis that has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The General Assembly finds that there are criminal street gangs operating in North Carolina and that the number of gang-related murders is increasing. It is the intent

of the General Assembly in enacting this Article to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which together are the chief source of terror created by street gangs.

(d) The General Assembly finds that prevention of violent gang activity and efforts to prevent violent gangs' ability to recruit additional members are effective means of addressing the issues created by gangs in this State.

(e) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs."

"**§ 14-50.17. Definitions.**

The following definitions apply in this Article:

(1) 'Criminal street gang' or '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 one or more felony offenses, or delinquent acts that would be felonies if committed by an adult, which has a common name, common identifying sign or symbol, and three or more members individually or collectively engaged in or who have engaged in criminal gang activity.

(2) 'Pattern of criminal gang activity' means the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the following offenses, provided that at least one of these offenses occurred after December 1, 2007, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity:

a. Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).

b. Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof."

"**§ 14-50.18. Participation in criminal street gang activity prohibited.**

(a) It is unlawful for any person employed by or associated with a criminal street gang to conduct or participate in the criminal street gang through a pattern of criminal gang activity.

(b) It is unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(c) It is unlawful for any person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity.

(d) It is unlawful for any person to cause, encourage, solicit, or coerce another to participate in a criminal street gang.

(e) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

(f) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

(g) Any person who violates this section shall be punished as follows:

(1) A person who violates subsection (a) or (b) of this section shall, in addition to any other penalty imposed by law, be punished as a Class H felon.

(2) A person who violates subsection (a), (b), (d), (e), or (f) of this section may be punished by imprisonment for an additional 10 years, in addition to any other penalty provided by law, if

a. the person also violates subsection (c) of this section, and

b. the violation of subsection (c) was in the same course of conduct as the violation of subsection (a), (b), (d), (e), or (f).

The State shall prove the issues set out subsubdivision a. and subsubdivision b. of this subdivision beyond a reasonable doubt during the same trial in which the defendant is tried for the offense or offenses specified in this subdivision, unless the defendant pleads guilty or no contest to the offenses. If the defendant pleads guilty or no contest to the offense or offenses, but pleads not guilty to violating subsection (c) of this section in the same course of conduct, then a jury shall be impaneled to determine the issues. The pleading is sufficient if it alleges that the defendant committed the offense or offenses and was in violation of subsection (c) of this section in the same course of conduct. One pleading is sufficient for all offenses that are tried at a single trial. The additional term of imprisonment set forth in this subdivision shall be served consecutively to any other sentence imposed on the person by law.

(3) A person who violates subsection (d), (e), or (f) of this section shall, in addition to any other penalty provided by law, be punished as a Class H felon.

(h) Any crime committed in violation of this section shall be considered a separate offense.

"**§ 14-50.19. Enhanced offense for criminal gang activity.**

Unless a different classification is expressly stated, a person who is convicted of an offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, is guilty of an offense that is one class higher than the offense

committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this section.

This section does not apply to the offenses set forth in G.S. 14-50.18.

"**§ 14-50.20. Reports of disposition; criminal street gang activity.**

When a defendant is found guilty of an offense, the presiding judge shall determine whether the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang. If the judge determines that the offense so qualifies, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal street gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes the court's determination.

"**§ 14-50.21. Contraband, seizure, and forfeiture.**

(a) All of the following are declared to be contraband, and no person shall have a property interest in them:

(1) All property that is directly or indirectly used or intended for use in any manner to facilitate a violation of this Article.

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this Article.

(b) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

(c) Within 60 days of the date of the seizure of contraband pursuant to this section, the district attorney or the Attorney General shall initiate a forfeiture proceeding as provided in G.S. 14-2.3.

"**§ 14-50.22. Local ordinances not preempted by State law.**

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

"**§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement.**

Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes. If the property is owned by a person who is not a member of the criminal street gang, this section shall apply only if the person has knowledge of the criminal gang activity.

"**§ 14-50.24. Matters proved in criminal trial court.**

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct.

"**§ 14-50.25. Applicability to juveniles under the age of sixteen.**

The provisions of this Article shall not apply to juveniles under the age of 16."

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.9. Discharging a firearm from within an enclosure.

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm, as a part of a pattern of criminal gang activity, from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

SECTION 3. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.17;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.17, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

~~Such person~~ Persons who are considered for bond under the provisions of subsections (d) and (e) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 4. G.S. 15A-1340.16(d) reads as rewritten:

"(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~~G.S. 15A-1340.16A, 15A-1340.16B, or 14-50.19 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."

SECTION 5. Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang, and the defendant possessed, displayed, or discharged a firearm during the commission of the felony.**

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony, and it is found as provided in this section that: (i) the person committed the felony for the

benefit of, at the direction of, or in association with, any criminal street gang as defined in G.S. 14-50.17, and (ii) the person actually possessed, displayed, or discharged a firearm during the commission of the felony, then the person shall be punished pursuant to one of the following subdivisions:

(1) If the person possessed a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months.

(2) If the person displayed a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 84 months.

(3) If the person discharged a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 120 months.

(b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony (i) for the benefit of, at the direction of, or in association with, any criminal street gang as defined in G.S. 14-50.17, and (ii) by possessing, displaying, or discharging a firearm. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(d) The enhanced punishment provided by this section for the acts of possessing or displaying a firearm applies even if the firearm is incapable of firing.

(e) The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the defendant.

(f) Subsection (a) of this section does not apply if the evidence that the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang, or that the defendant possessed, displayed, or discharged a firearm during the commission of the offense, is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 6. G.S. 15A-1340.16A(c) reads as rewritten:

"(c) ~~If~~ Except as provided in G.S. 15A-1340.16B, if a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a

firearm and (ii) the person actually possessed the firearm about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1)."

SECTION 7. There is appropriated to the Department of Juvenile Justice and Delinquency Prevention the sum of ten million dollars ($10,000,000) for the 2007-2008 fiscal year to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention programs.

The Department of Juvenile Justice and Delinquency Prevention, in conjunction with the Governor's Crime Commission, shall develop the criteria for eligibility for these funds. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile or adult programs that meet the criteria established by the Department of Juvenile Justice and Delinquency Prevention and the Governor's Crime Commission.

The Department of Juvenile Justice and Delinquency Prevention shall report on the uses of these funds no later than April 1, 2008, to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division.

SECTION 8. Section 38 of this act becomes effective July 1, 2007. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1358:
Street Gang Prevention Act

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	April 16, 2007
Introduced by:	Sen. Graham	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: ***This act would create a new Article in the criminal law statutes directed towards participation in street gang activities. The provisions include enhancement of penalties for felonies that are related to street gangs. The appropriation in the act is effective July 1, 2007. The remainder is effective on December 1, 2007, and applies to offenses committed on or after that date.***

BILL ANALYSIS:

Section 1: The act defines "criminal street gang" and "pattern of criminal gang activity, and does not apply to minors under age sixteen years old. Generally, it involves the commission of offenses under the Controlled Substances Act, or designated offenses under the criminal law statutes. The criminal prohibitions include:

- Employment or association with a criminal street gang.
- Acquiring or maintaining real or personal property (including money) derived from gang activity.
- Acting as an organizer or supervisor with a street gang, to include conspiring to engage in a pattern of gang activity.
- Soliciting or encouraging another to participate in a street gang.
- Punish or conspire to punish or retaliate against someone who withdraws from a street gang.

Any violation is a Class H felony. However, a person that is an organizer or supervisor, and violates one of the other provisions in the same course of conduct, can be imprisoned for an additional 10 years.

Any misdemeanor or felony offense that is committed for the benefit of, direction of, or in association with a street gang is elevated one class higher that its normal designation. The bill also contains provisions for the seizure of contraband, and the designation of real property as a public nuisance if used in conjunction with the conduct of criminal street gang activity.

Section 2: The discharging of a firearm from a building or other structure, as a part of a pattern of street gang activity, towards a person outside of the structure is designated a Class E felony.

Section 3: The act provides that it is a rebuttable presumption that no condition of release will assure the appearance of a person (1) charged with a violation of an offense committed on behalf of a street gang; (2) who was on pretrial release for another offense; and (3) who has a prior conviction of an offense under the criminal street gang statutes within the past five years, or the defendant's release for the offense, whichever is later. Persons considered for bond under the section may only be released by a judge upon a finding that there is a reasonable assurance that the person will appear and release does not impose an unreasonable risk of harm to the community.

(over)

Section 4: This is a conforming change to provide that evidence necessary to prove an enhanced sentence under the criminal street gang statute cannot be used twice to further aggravate the sentence.

Section 5: The statutes are amended to add an enhanced sentence where an A through E felony is:

- Committed for the benefit of, at the direction of, or in association with any criminal street gang, and
- A firearm was possessed, displayed, or discharged during the offense.

The enhancement is based on the extent to which the firearm was used:

1) Possessed = a minimum of 60 additional months of imprisonment
2) Displayed = a minimum of 84 additional months of imprisonment
3) Discharged = a minimum of 120 additional months of imprisonment

Section 6: This is a technical change. The referenced statute provides for life imprisonment without parole for a second conviction of a B1 felony against a victim of 13 years of age or younger. The enhancement provision for using a firearm in the commission of a felony would not apply.

Section 7: The act provides for an appropriation of ten million dollars ($10,000,000) to the Department of Juvenile Justice and Delinquency Prevention for the 2007-2008 fiscal year. The money is to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention. The grant criteria include a 25% matching requirement, with one-half as in-kind contributions. The Department shall report to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, and to the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division, no later than April 1, 2008 on the use of the funds.

EFFECTIVE DATE: The appropriation is effective July 1, 2007. The remainder of the act is effective for offenses occurring on or after December 1, 2007.

S1358e1-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 681

Short Title: Firemen's Relief Fund Immunity.-AB (Public)

Sponsors: Senator Hoyle.

Referred to: Judiciary 1 (Civil).

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUALIFIED IMMUNITY FOR PERSONS SERVING ON LOCAL BOARDS OF TRUSTEES OF THE FIREMEN'S RELIEF FUND OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 84 of Chapter 58 of the General Statutes of North Carolina is amended by adding a new section to read:

"**§ 58-84-60. Immunity.**

A person serving on a local board of trustees of the Firemen's Relief Fund shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

(1) Was not acting within the scope of that person's official duties;

(2) Was not acting in good faith;

(3) Committed gross negligence or willful or wanton misconduct that resulted in the damages or injury;

(4) Derived an improper personal financial benefit from the transaction; or

(5) Incurred the liability from the operation of a motor vehicle."

SECTION 2. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 3. This act becomes effective October 1, 2007, and applies only to causes of action arising on or after that date.

PROPOSED SENATE COMMITTEE SUBSTITUTE H552-CSST-25 [v.1]

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUALIFIED IMMUNITY FOR PERSONS SERVING ON LOCAL BOARDS OF TRUSTEES OF THE FIREMEN'S RELIEF FUND OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 84 of Chapter 58 of the General Statutes of North Carolina is amended by adding a new section to read:

"**§ 58-84-60. Immunity.**

A person serving on a local board of trustees of the Firemen's Relief Fund shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

(1) Was not acting within the scope of that person's official duties;

(2) Was not acting in good faith;

(3) Committed gross negligence or willful or wanton misconduct that resulted in the damages or injury;

(4) Derived an improper personal financial benefit, either directly or indirectly, from the transaction; or

(5) Incurred the liability from the operation of a motor vehicle."

SECTION 2. This act becomes effective October 1, 2007, and applies only to causes of action arising on or after that date.

HOUSE BILL 552:
Firemen's Relief Fund Immunity.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 12, 2007
Introduced by:	Rep. Sutton	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H552-CSST-25		Committee Counsel

SUMMARY: ***Senate Bill 681 would grant qualified immunity to persons serving on the local boards of trustees of the Firemen's Relief Fund of North Carolina. The proposed committee substitute would clarify that the qualified immunity does not apply where the trustee directly or indirectly derived an improper benefit from the action.***

[As introduced, this bill was identical to S681, as introduced by Sen. Hoyle, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: Article 84 of Chapter 58 provides for the creation, funding, and duties of local Fireman's Relief Funds. Local Fireman's Relief Funds are funded by a portion of an existing tax on gross premiums of fire and lightening insurance, and are governed by a local Fireman's Relief Fund Board of Trustees. The local Firemen's Relief Fund is to be used for:

- To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of duties as a fireman.
- To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or State, either by accident or from disease contracted or injury received by reason of such service.
- To provide assistance, upon approval by the Secretary of the State Firemen's Association, to a destitute member fireman who has served honorably for at least five years.
- To provide for the payment of any fireman's assessment in the Firemen's Fraternal Insurance Fund of the State of North Carolina if the board of trustees finds that the fireman is unable to pay the assessment because of disability.
- To provide for benefits of supplemental retirement, workers compensation, and other insurance and pension protection for firemen otherwise qualifying for benefits from the Firemen's Relief Fund.
- To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the Firemen's Relief Fund.

BILL ANALYSIS: Senate Bill 681 provides that persons serving on local boards of trustees of Fireman's Relief Funds shall be immune from civil liability for monetary damages for any act or failure to act arising out of their service on the Board, except to the extent covered by insurance. The grant of immunity also does not apply in any of the following situations:

1. The trustee was not acting within the scope of the trustee's official duties.
2. The trustee was not acting in good faith.
3. The trustee committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
4. The trustee derived an improper personal financial benefit from the transaction.
5. The trustee incurred the liability from the operation of a motor vehicle.

EFFECTIVE DATE: Effective October 1, 2007, and applies to causes of action arising on or after that date.

BACKGROUND: Examples of similar enacted language:

- Local ABC Boards - G.S. 18B-700(j).
- Directors and officers of nonprofit corporations - G.S. 55A-8-60(a).
- Officers and members of a supreme governing body of a Fraternal Benefit Society - G.S. 58-24-35(d).
- Trustees, directors and officers of religious societies - G.S. 61-1(b).

Giles Perry contributed to this summary.



North Carolina Families Against Mandatory Minimums

SB 1358 and HB 274, "the gang bills" are a flawed approach to problems of youth delinquency and violence

Consider the enormous human and fiscal costs

- The fiscal note for HB 50 v. 3, introduced in 2005 and identical to HB 274, estimated a minimum projected additional prison operating cost of **nearly $45 million** in the first year and tens of millions more over the coming decade, if just 1 percent of the new offenses resulted in convictions.

- This projection *excludes* the costs of the new sentences and sentencing enhancements in the bill, so it is a *very* conservative cost estimate. SB 1358 does not apply to children ages 12-15, so costs related to juveniles would be somewhat less. *(See the fiscal analysis for qualifiers and methodology).*

- The bills also include a $10 million appropriation for prevention – a wise investment that should be used to fund the Department of Juvenile Justice and Delinquency Prevention's evidence-based prevention and intervention programs. However, this amount will be dwarfed by the tens of millions in corrections costs that will be required if these bills are enacted.

- North Carolina is already facing a crisis in overcrowded prisons and mounting corrections costs that squeeze out funding for the very programs that most effectively address gang activity in communities. North Carolina prisons were operating at 116 percent of capacity at the end of 2005.[1]

- Rearrest and reincarcaration rates for incarcerated children and youth are significantly worse than cost-effective approaches to delinquency and youth violence. Higher recidivism rates will create additional costs for years to come.

"Several studies in the past decade in Florida, New York, New Jersey, Minnesota, Idaho and other states – show that re-arrest and re-incarceration rates are significantly higher for adolescents tried and punished in criminal court compared with matched groups of teenage offenders who remained in the juvenile court. . . The evidence is most clear in the case of violent crimes, the very crimes that threaten public safety and erode confidence in the courts. . . As legislators move toward placing increasingly younger teens in adult criminal court, social and biological evidence suggests moving in the other direction." *—Jeffrey Fagan, professor at Columbia University, a member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, and vice chair of the Committee on Law and Justice at the National Research Council.*

Consider the current penalties for gangs, serious and violent crime

- The legislature designed North Carolina's sentencing guidelines to put violent and serious offenders behind bars for a very, very long time. **Murders, assaults, gun crimes and drug trafficking are already severely punished.**

- Prosecutors can **already** move for a transfer of a juvenile age 13 years and older to adult court (it is unclear what would happen to 12-year-olds under HB 274).

- Use of a firearm in commission of an A-E (serious and violent) felony currently carries a 5-year mandatory minimum penalty, to be served consecutively.

- Judges in North Carolina can **(and do)** increase sentences for gang-related conduct under the guidelines:

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

NOTE: gang activity varies across the state in seriousness, intensity and duration

- Gang activity is a serious problem, but gang activity is *not* uniformly on the rise around the country or in North Carolina communities. The claim that a new wave of gang activity is spreading across North Carolina is not supported by the best available data, say national experts. The claim of a surge in gang activity in the southeastern region of the country is also without merit. Gang activity tends to evidence peaks and valleys, depending on conflicts between local gangs and community conditions that give rise to them.

HB 274 and SB 1358 cast too wide a net

- The definition of "gang" is vague and as written, exposes children (age 12 and over in HB 274) and youth (age 16 and older in SB 1358) to long felony sentences and lifelong identification as "gang" members.

  While SB 1358 adds a list of requirements for identifying gang membership, the overbroad definition of "gang" remains.

- Individuals, including children and youth, may be identified as gang members if they: mimic or adopt gang signs and symbols for status reasons, join gangs for self-protection, are involved in minor drug offenses, or engage in serious delinquent behavior.

  Under these bills, youth from the same neighborhood who wear similar "hip hop" clothing and engage in even minor drug use offenses could be identified as gang members.

  Most youth who actually join gangs remain in for less than a year. Many troublesome youth groups (e.g. skateboarders) are mistaken for gangs, say national experts.

- Studies repeatedly show that children and youth of color and/or mentally ill are disproportionately convicted and incarcerated under harsh sentencing laws.

  "As the latest statistics show, disproportionate minority representation is clearly evident at each stage of the juvenile justice system and becomes more apparent as youth go deeper into the system. In 2003, youth of color made up about one third of the juvenile population nationwide but accounted for almost two-thirds of the population in secure juvenile facilities. While the disproportionality has been attributed to differences in behavior, such an explanation fails to support the large discrepancy in numbers." (**Minorities in the Juvenile Justice System** December 1999. Available from Office of Juvenile Justice and Delinquency Prevention; Snyder, H. N. & Sickmund, M. (2006). **Juvenile Offenders and Victims: 2006 National Report.** Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.)

HB 274 and SB 1358 are too punitive and remove judges' discretion

- **A "one-strike" provision**: The bills **enhance** sentences for **any** offense by one offense class level, if it is committed for the benefit of, at the direction of, or in association with any criminal street gang, unless a different offense class is expressly stated. A Class A1 misdemeanor will be enhanced to a Class I felony, under these bills. **This applies to first-time felonies and misdemeanors.**

- **A "two strikes" provision**: under these bills, those charged with criminal street gang activity involving any controlled substance or almost any criminal law violation will be sentenced as Class H felons **in addition** to the **enhanced** penalty (see above) for the substantive underlying offense. To qualify, the child or youth must have committed **at least one prior** offense. At least one of the offenses must have occurred after Dec. 1 (2007) and the last offense must have occurred within three years of prior gang activity.

- Judges will determine whether convicted individuals are street gang members and include that information in their criminal records – which, in addition to any felony convictions, **will have a lifetime impact** on employment, housing and educational opportunities.

- A leader, organizer or supervisor of a criminal street gang is subject to a 10-year sentencing enhancement. (There is no legal definition in the statutes.)

- The bills establish harsh new mandatory minimums (and definitions) for firearm offenses of 5, 7 and 10 years that those convicted must serve **consecutively** to any other sentence(s) imposed. *Judges will not be able to use their discretion when imposing these sentences.*

- HB 274 includes an appropriation for a gang database. Gang intelligence databases raise due process and constitutional issues, especially for **minorities and juveniles.** The inclusion of juveniles in them raises issues because of uncertainty in gang definitions, difficulties in validating membership, and the short-term involvement of most youths in adolescent gangs. The federal government has established standards for such databases.

- States that depended largely on a punitive approach, like California, saw gangs and their criminal activities proliferate. Incarceration policies including three-strikes legislation and enhanced sentencing laws fueled the growth and centralization of prison-based gangs.

- Gang suppression measures relying on long prison sentences for suspected gang members show limited, short-term reductions in gang crime. Cutting off "the head of the monster" is not likely to kill it without reducing growth in the number of gangs and gang members.

North Carolina is already using more cost-effective approaches:

- North Carolina FAMM applauds the $10 million in prevention money in the House and Senate bills. But this amount will be dwarfed by the tens of millions in corrections costs that will be required if these bills are enacted.

- Following a 2005 appropriation, North Carolina is already implementing an evidence-based program, the Comprehensive Gang Prevention, Intervention, and Suppression Model in 11 funded sites. Emphasis is on building a continuum of services, including prevention services, to reduce the number of youths who join gangs, and intervention teams and outreach that target current gang members to remove them from the gang. These strategies and services are integrated with existing law enforcement suppression that targets the most dangerous gangs and gang members.

Prevention and intervention address underlying problems

- Street gangs are usually concentrated in communities with high rates of **unemployment, crime, poverty, and drug and alcohol addiction**.

- Studies show that prevention, intervention and jobs programs reduce gang activity and recidivism for the majority of children and youth who do not commit violent crimes but who may identify with or join street gangs at some time in their lives.

- Investing in building schools, not prisons, is the best crime prevention measure possible for at-risk youth.

  "This inadequate academic preparation has uncanny statistical relationships with incarceration. In 1999, while 3 percent of white men in their early 30s (30-34) had prison records, for high school dropouts the figure was four times larger at 13 percent. For black men, a lack of access to quality educational experiences had an even more disturbing outcome: 52 percent of high school dropouts had a prison record, compared to 22 percent of the overall black male population with a prison record. And while bad school experiences do not automatically lead to involvement in the justice system, most of those involved in the justice system do nonetheless have poor school records. For example, in 1995, a total of 68 percent of state prison inmates had not received a high school diploma. One study estimated that educational differences between blacks and whites explain as much as 23 percent of the black-white difference in rates of incarceration."

  "Studies have shown that a child who has been suspended is more likely to be retained in grade, to drop out, to commit a crime, and/or to end up incarcerated as an adult." *(NAACP School-to-Prison Pipeline)*

- National gang experts emphasize that the most effective approach is a balanced one, with integrated prevention, intervention, and suppression services and sanctions.

Some research suggests that youth outreach may be more effective in reducing the violent behavior of the younger, less violent, gang youth, and that a combined youth outreach that leads to employment and police suppression strategy might be more effective with the older, more criminally active and violent gang members.

- There are three other important ingredients for success:
  - — An objective assessment of the community's gang problem that provides the basis for a data-driven problem-solving approach.
  - — Targeting of gang members and at-risk youths for a continuum of services.
  - — The development of an interdisciplinary intervention team (that enjoins police and probation agents as key players) and the coordination of outreach worker efforts.

Support the prevention and intervention funds in HB 274 and SB 1358 but please reject the mandatory, disproportionate and sweeping penalties that will disproportionately affect at-risk children and youth of color.

Please contact Randolph Cloud, FAMM consultant, at (919) 821-1004 or Laura Sager, FAMM national campaign director at lsager@famm.org, for more information.

[1] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Prisoners in 2005 at 7, Table (Revised Jan. 18, 2007), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf.

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, April 17, 2007
10:00 a.m.
Room 1028

1 **Call Meeting to Order.**

2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 236	Regulation of Professional House Moving	Senator Jenkins
SB 681	Firemen's Relief Fund Immunity-AB	Senator Hoyle
HB 552	Firemen's Relief Fund Immunity-AB	Representative Sutton
SB 793	Strengthen Registration Plate Issuance	Senator Jenkins
SB 1357	Motor Vehicle Chop Shop Act	Senator Graham
SB 1358	Street Gang Prevention Act	Senator Graham

Adjournment.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 17, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joey Gardner	DMV License & Theft
Sarah Preston	ACLU-NC
Jeff Mixon	civitas Institute
Hays Hiddesness	NCGA
Fred West	DNDP
OFFICER MICHAEL REPORT	CHAR-MECK POLICE DEPT
Eddie Levine	Char-Meck Police
Boyd Cauble	City of Charlotte
David Hunter	Charlotte-Mecklenburg Police Dept
Rose Williams	DOI
Wayne Goodman	DOI

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 17, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Rau	Grass Roots NC
Lisa Martin	NC Home Builders
Alastair Macaulay	NC Home Builders
[illegible]	R. [illegible]
[illegible]	NC FAMM
Landon S Adams	Triangle Lost Generation Task force
[illegible]	DOA-YAIO
Kelly Parker	Elon University - shadowing
Johanna Reese	DOT
Richard Howard	DMV
Portia Manley	NCDOT/DMV

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 17, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Stewart	IFNC
Susan Volavri	Wahrmidi
M Osborne	AOC
TRoy D. PAGE	N.C. Sentencing Commission
Martin Phaven	DJJDP
Christine Wunsche	IOS - Daily Bulletin
Jaime Devers RN	Nurse of the Day
Kim Hibbard	NCLM
Anita Watkins	NCLM
R. Reed Wilson	NCAJ/BA
Dennis Patterson	OSC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 17, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Harvey Hutson	N.C. B.A.
Joanne Stevens	Stevens & Assoc.

SENATE JUDICIARY I COMMITTEE
(Civil)

April 24, 2007
10 a.m. --Room 1128

MINUTES

The Senate Judiciary Committee met Tuesday, April 24 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Clark Jenkins, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Tony Rand, Sen. Richard Stevens and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:09 a.m. and recognized Sen. Floyd McKissick, who replaces the late Senator Jeanne Lucas and is now appointed to Judiciary I (Civil) Committee. Sen. Nesbitt then called upon Sen. Jenkins to speak of Senate Bill 236, a bill calling for the regulation of home movers. Jenkins motioned for approval of a Proposed Committee Substitute, the motion was approved unanimously.

Several concerns were raised by senators regarding wording in the bill. Sen. Kinnaird, regarding Section 1, Lines 4 through 7, noting that "three crashes sounds like an awful lot."

Sen. Brunstetter said that he was surprised at how low the amount of motor vehicle liability insurance a house mover had to have. A member of the audience told the committee that a tractor trailer driver had to have $750,000 in liability insurance, and a house mover had to have a minimum of $350,000.

Sen. Rand commented that one could "see a tractor trailer moving at 65 or 70 miles an hour" but that a house would not move as quickly.

Sen. Clodfelter motioned for a favorable report. Some discussion continued, Staff Attorney Bill Gilkeson said he would look at Section 2, Lines 29-34. The motion passed unanimously.

The second bill discussed was Senate Bill 793, again sponsored by Sen. Jenkins, a bill that would strengthen registration plate issuance and require vehicle owners to show a valid North Carolina drivers license or special identification establishing residency when registering a motor vehicle.

Sen. Rand motioned for adoption of a Proposed Committee Substitute for the bill. The motion passed unanimously. Sen. Hoyle motioned for favorable report for the PCS for SB 793, unfavorable as to original bill. . The motion passed unanimously.

Sen. Rand questioned wordage in the bill. Sen. Hoyle commented that "something needed to happen" with regard to persons registering cars in North Carolina for purposes of lower insurance rates. Sen. Nesbitt noted that wording in the bill regarding multistate corporations with vehicles in should be reviewed. The bill was carried over.

Sen. Nesbitt then called on Sen. Rand for Senate Bill 999, which makes technical corrections to existing DWI statutes from 2006. Sen. Rand motioned for adoption of a Proposed Committee Substitute for the bill. The motion passed unanimously.

Sen. Rand told the committee that the bill closes loopholes for people with multiple driving while impaired charges. He cited a case where a man had three DWI charges on appeal and then created a fatality before being convicted of any of the other three.

Sen. Brunstetter motioned that the proposed committee substitute for SB 999 receive a favorable report, unfavorable as to original bill. The motion passed unanimously and the meeting was adjourned at 10:51 a.m.

Copies of Senate Bill 236, proposed committee substitute for SB 236, Bill Analysis for SB 236, Senate Bill 793, a proposed committee substitute for SB793, Bill Analysis for SB 793, Senate Bill 999 and a proposed committee substitute for SB 999, and the Bill Analysis for the pcs for SB 999 are attached to the Minutes as Attachments 1, 2, 3, 4, 5 6, 7, 8, and 9 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 2

SENATE BILL 236
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted 3/28/07

Short Title: Regulation of Professional Housemoving. (Public)

Sponsors:

Referred to:

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL HOUSEMOVING STATUTES CONTAINED IN ARTICLE 16 OF CHAPTER 20 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-356 reads as rewritten:

"**§ 20-356. Definitions.**

~~"Person" as used in this Article shall mean an individual, corporation, partnership, association or any other business entity. The word "house" as used in this Article shall mean a dwelling, building, or other structure in excess of 15 feet in width; provided that neither mobile homes, nor modular homes or portions thereof, are within this definition when being transported from the manufacturer or from a licensed retail dealer location to the first set-up site. The word "Department" as used in this Article shall mean the North Carolina Department of Transportation.~~

As used in this Article, the following terms mean:

(1) Actively engaged. – Any person who has an active license, is in good standing with the Department, the Department of Revenue, and regularly engages in the business of moving houses.

(2) Department. – The Department of Transportation.

(3) House. – A dwelling, building, or other structure in excess of 15 feet in width; provided that mobile homes, manufactured homes, or modular homes, or portions thereof, are not within this definition when being transported from the manufacturer or from a licensed retail dealer location to the first set-up site.

(4) Person. – An individual, corporation, partnership, association, or any other business entity.

(5) Unsafe practices. –

a. Any act that creates a hazard to the motoring public, fails to comply with federal or State occupational safety and health regulations, or violates any labor laws related to worker safety.
b. Three crashes or collisions while moving houses, or three or more preventable injuries on a housemoving work site, within a 24-month period of time."

SECTION 2. G.S. 20-358(1) reads as rewritten:

"(1) The applicant must be at least ~~18~~21 years of age; present acceptable evidence of good character and show sufficient housemoving experience on the application form furnished by the Department. Proof of creditable housemoving experience must be furnished at the time of application for those applicants not previously licensed by the Department. To comply with the requirement of proof of creditable housemoving experience, all applicants not previously licensed by the Department shall submit to the Department sworn affidavits from previous licensed housemoving employers that provide, in detail, the applicant's full-time experience, including any supervisory duties and experience. Housemoving experience means extensive and responsible training gained by the applicant while engaged actively and directly on a full-time basis in the moving of houses and structures on public roads and highways with at least ~~24 months experience.~~five years of experience, two of which must have been in a supervisory position. Examples of the capacity in which a person may work in gaining experience include the following in building moving operations:
a. Moving superintendent,
b. Moving foreman, and
c. General mechanic and helper in the housemoving profession or trade."

SECTION 3. G.S. 20-363 reads as rewritten:

"**§ 20-363. Removal and replacement of obstructions.**

All obstructions, including mailboxes, traffic signals, signs, and utility lines will be removed immediately prior to and replaced immediately after the move at the expense of the ~~mover, provided that arrangements for and approval from the owner is obtained.~~mover. Any property, real or personal, to be removed, which is not located in the right-of-way, shall not be removed until the owner is notified and arrangements for and approval from the owner are obtained."

SECTION 4. G.S. 20-371(a) reads as rewritten:

"(a) Any person violating the provisions of this Article or the regulations of the Department governing housemoving as a first offense shall be guilty of a Class 3 misdemeanor which may include a maximum fine of ~~not more than~~ five hundred dollars ($500.00). A second violation of any provision of this Article or the regulations of the Department governing housemoving shall be punished as a Class 2 misdemeanor which shall include a minimum fine of one thousand dollars ($1,000). A third or subsequent violation of any provision of this Article or the regulations of the Department governing

housemoving shall be punished as a Class 1 misdemeanor which shall include a minimum fine of two thousand dollars ($2,000) for each violation. The State Highway Patrol shall impound any conveyances or vehicles being used in violation of this Article. If the State Highway Patrol impounds a conveyance or vehicle used in violation of this Article, the State Highway Patrol shall have custody and control of all impounded conveyances and vehicles until ordered by a court of competent jurisdiction to return the conveyances or vehicles to the lawful owner or until the violation is corrected and the Department authorizes the State Highway Patrol to release the conveyance or vehicle to the lawful owner or operator. It shall be the responsibility of the lawful owner to pay any towing or storage fees for a vehicle impounded pursuant to this subsection."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-374. Unsafe operation and practices; unsettled judgments; review of existing license every 12 months.**

(a) If the Department determines that a housemover has engaged in unsafe practices, all licenses, permits, and authorizations issued pursuant to this Article, and any required revenue licenses, shall be summarily revoked.

(b) If the Department determines that a housemover has two or more unsettled judgments that have been properly filed, registered, or domesticated in this State, all licenses, permits, and authorizations issued pursuant to this Article, and any required revenue licenses, shall be summarily revoked.

(c) A housemover that is properly licensed by the State and that is currently authorized by the Department of Transportation to conduct business shall have the status of any license issued reviewed at least once every 12 months to ensure the business is actually engaged in the business of housemoving. If the Department determines that an individual or business is no longer actively engaged in housemoving or determines that a partnership, firm, or corporation has been dissolved for any reason, all licenses, permits, and authorizations issued pursuant to this Article, and any required revenue licenses, shall be summarily revoked."

SECTION 6. This act becomes effective January 1, 2008, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 236

Commerce, Small Business and Entrepreneurship Committee Substitute Adopted 3/28/07

PROPOSED COMMITTEE SUBSTITUTE S236-CSRR-2 [v.10]

4/23/2007 6:35:05 PM

Short Title: Regulation of Professional Housemoving. (Public)

Sponsors:

Referred to:

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL HOUSEMOVING STATUTES CONTAINED IN ARTICLE 16 OF CHAPTER 20 OF THE GENERAL STATUTES.

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"**§ 20-356. Definitions.**

~~"Person" as used in this Article shall mean an individual, corporation, partnership, association or any other business entity. The word "house" as used in this Article shall mean a dwelling, building, or other structure in excess of 15 feet in width; provided that neither mobile homes, nor modular homes or portions thereof, are within this definition when being transported from the manufacturer or from a licensed retail dealer location to the first set-up site. The word "Department" as used in this Article shall mean the North Carolina Department of Transportation.~~

As used in this Article, the following terms mean:

(1) Actively engaged. – Any person who has an active license, is in good standing with the Department and the Department of Revenue, and regularly engages in the business of moving houses.

(2) Department. – The Department of Transportation.

(3) House. – A dwelling, building, or other structure in excess of 15 feet in width. Mobile homes, manufactured homes, or modular homes, or portions thereof, are not within this definition when being transported from the manufacturer or from a licensed retail dealer location to the first set-up site.

(4) Person. – An individual, corporation, partnership, association, or any other business entity.

(5) Unsafe practices. – Either of the following:

a. Any act that is determined by an enforcing agency or by a court of competent jurisdiction to create a hazard to the motoring public, to violate federal or State occupational safety and health regulations, or to violate any labor laws related to worker safety.

b. Three crashes or collisions while moving houses if the mover is determined by a court of competent jurisdiction to be at fault in the crash or collision, or three or more preventable injuries on a housemoving work site, within a 24-month period of time."

SECTION 2. G.S. 20-358(1) reads as rewritten:

"(1) The applicant must be at least ~~18~~21 years of age; present acceptable evidence of good character and show sufficient housemoving experience on the application form furnished by the Department. Proof of creditable housemoving experience must be furnished at the time of application for those applicants not previously licensed by the Department. ~~Housemoving~~ Creditable housemoving experience means extensive and responsible training gained by the applicant while engaged actively and directly on a full-time basis in the moving of houses and structures on public roads and highways with at least ~~24 months experience.~~five years of experience, two of which must have been in a supervisory position. Examples of the capacity in which a person may work in gaining experience include the following in building moving operations:

a. Moving superintendent,

b. Moving foreman, and

c. General mechanic and helper in the housemoving profession or trade.

To comply with the requirement of proof of creditable housemoving experience, each applicant not previously licensed by the Department shall submit to the Department an affidavit from a certified public accountant that the applicant has documented employment records for a period of five continuous years from a duly licensed housemover or housemovers. Each applicant shall also submit to the Department affidavits from a previous licensed housemoving employer or employers that provide, in detail, the applicant's full-time experience, including any supervisory duties and experience. "

SECTION 3. G.S. 20-363 reads as rewritten:

"**§ 20-363. Removal and replacement of obstructions.**

All obstructions, including mailboxes, traffic signals, signs, and utility lines will be removed immediately prior to and replaced immediately after the move at the expense of the ~~mover, provided that arrangements for and approval from the owner is obtained.~~mover. Any property, real or personal, to be removed, which is not located in

the right-of-way, shall not be removed until the owner is notified and arrangements for and approval from the owner are obtained."

SECTION 4. G.S. 20-371(a) reads as rewritten:

"(a) Any person violating the provisions of this Article or the regulations of the Department governing housemoving shall be guilty of a Class ~~3~~ 1 ~~misdemeanor which may include a fine of not more than five hundred dollars ($500.00).~~misdemeanor."

SECTION 5. Article 16 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-374. Unsafe operation and practices; unsettled judgments; review of existing license every 12 months.**

(a) If the Department determines that a housemover has engaged in unsafe practices, all licenses, permits, and authorizations issued pursuant to this Article, and any required revenue licenses, shall be revoked for a period of six months.

(b) If the Department determines that a housemover has two or more unsettled judgments that have been properly filed, registered, or domesticated in this State, all licenses, permits, and authorizations issued pursuant to this Article, and any required revenue licenses, shall be revoked for a period of six months.

(c) A housemover that is properly licensed by the State and that is currently authorized by the Department to conduct business shall have the status of any license issued reviewed at least once every 12 months to ensure the business is actively engaged in the business of housemoving. If the Department determines that an individual or business is no longer actively engaged in housemoving or determines that a partnership, firm, or corporation has been dissolved for any reason, all licenses, permits, and authorizations issued pursuant to this Article, and any required revenue licenses, shall be cancelled.

(d) If a housemover's license, permit, or authorization is revoked or cancelled under this section, the housemover may seek a review of the record in the case by filing a motion with the Superior Court of the county in which the housemover does business or with Wake County Superior Court."

SECTION 6. This act becomes effective January 1, 2008, and applies to offenses committed on or after that date.

SENATE BILL 236:
Regulation of Professional Housemoving

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 24, 2007
Introduced by:	Sen. Jenkins	**Summary by:**	William R. Gilkeson
Version:	PCS to Second Edition S236-CSRR-2		Committee Co-Counsel

SUMMARY: This Proposed Committee Substitute for Senate Bill 236 would amend the professional housemoving statutes to strengthen the licensing statutes and to increase criminal penalties for people who move houses without being properly licensed.

CURRENT LAW: All persons who engage in the profession of housemoving on the roads and highways of the State must be licensed annually by the Department of Transportation. In order to be licensed a person must be at least 18 years of age, have extensive housemoving experience for at least 24 months, and have qualified housemoving equipment. In addition, all licensed housemovers must maintain minimum motor vehicle and general liability insurance of $350,000 and workers compensation coverage, plus have in force insurance of at least $25,000 for property damage to the house being moved, and $50,000 of cargo insurance. All persons moving a house on the highways must obtain a permit from DOT and must have the required vehicles escorting the house. The penalty for violations of the Article and the DOT regulations is a Class 3 misdemeanor with a fine of no more than $300.00.

BILL ANALYSIS:

Section 1 of the PCS for Senate Bill 236 amends the definitions by recodifying the existing definitions and adds new definitions for "actively engaged" in housemoving and "unsafe practices" in housemoving, including safety violations and other accidents. ***(This section is changed in the PCS from Edition 2 of the bill, requiring official determinations of unsafe practices.)***

Section 2 amends the licensing requirement by raising the minimum age from 18 to 21 years of age, requires that proof of creditable housemoving experience be by detailed affidavit, increases the minimum prior housemoving experience from 2 to 5 years, and adds a requirement of at least 2 years of supervisory experience. As proof of experience, an applicant must submit an affidavit by a CPA that 5-year employment records exist, and affidavits by employers detailing what the experience was. ***(This section is changed in the PCS from Edition 2 of the bill, adding the CPA affidavit.)***

Section 3 requires notice and approval of any property owners whose property, not in the highway right of way, must be removed before the house can be transported.

Section 4 increases the criminal penalties for violations of the housemoving law from Class 3 to Class 1. The maximum fine of $300 is removed. Structured Sentencing allows for a fine in the discretion of the court for a first offense under Class 1 and for increased penalties with each subsequent offense. ***(This section is changed in the PCS from Edition 2 of the bill. Edition 2 had a different class of misdemeanor for second and third offenses. It retained the first-offense maximum fine, but increased it to $500. It also had a provision for impoundment, which is deleted in the PCS.)***

Section 5 adds a new section to the law to require DOT to revoke the license of any housemover who engages in "unsafe practices" (defined in the bill) or who has two or more outstanding judgments. The revocation lasts for six months. DOT is required to review a licensee every 12 months, and to cancel the license of licensee who is no longer "actively engaged" (defined in the bill) in housemoving. ***(This section is changed in the PCS from Edition 2 of the bill, putting a time limit on the license revocations, and providing a review in Superior Court for people who licenses have been cancelled or revoked.)***

EFFECTIVE DATE: This act becomes effective January 1, 2008, and applies to offenses committed on or after that date.

S0236e2-SMRR-CSRR-2

(Walker Reagan substantially contributed to this summary.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 793

Short Title:	Strengthen Registration Plate Issuance.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Judiciary I (Civil).	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE AN INDIVIDUAL TO SHOW PROOF OF RESIDENCE AND LEGAL PRESENCE PRIOR TO THE ISSUANCE OF A REGISTRATION PLATE FOR A MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-52 reads as rewritten:

"**§ 20-52. Application for registration and certificate of title.**

(a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application form provided by the ~~Division.~~ Division and provide a valid North Carolina drivers license or special identification card issued pursuant to this Chapter. The application form must request all of the following information and may request other information the Division considers necessary:

(1) The owner's name.

(1a) If the owner is an individual, the following information:

a. The owner's mailing address and residence address.

b. The owner's social security number.

(1b) If the owner is a firm, a partnership, a corporation, or another entity, the address of the entity.

(2) A description of the vehicle, including the following:

a. The make, model, type of body, and vehicle identification number of the vehicle.

b. Whether the vehicle is new or used and, if a new vehicle, the date the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.

(3) A statement of the owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien.

The application form must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the motor vehicle registration laws and may not disclose the social security number for any other purpose. The social security number of a person who applies to register a vehicle or of a person in whose name a vehicle is registered is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).

(a1) The requirement to produce a valid North Carolina drivers license or special identification card under subsection (a) of this section shall not apply to out-of-state students or active duty military personnel who present a valid license from their home state and a valid identification from the school being attended or a valid active duty military identification card. The Division may also issue a registration plate and certificate of title to individuals, who are not able to attain a license due to medical or physical reasons that can be documented and verified by the Division, for a vehicle to be primarily used to transport the applicant.

(b) When such application refers to a new vehicle purchased from a manufacturer or dealer, such application shall be accompanied with a manufacturer's certificate of origin that is properly assigned to the applicant. If the new vehicle is acquired from a dealer or person located in another jurisdiction other than a manufacturer, the application shall be accompanied with such evidence of ownership as is required by the laws of that jurisdiction duly assigned by the disposer to the purchaser, or, if no such evidence of ownership be required by the laws of such other jurisdiction, a notarized bill of sale from the disposer."

SECTION 2. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 793
PROPOSED COMMITTEE SUBSTITUTE S793-CSTC-7 [v.4]

4/4/2007 5:38:21 PM

Short Title: Strengthen Registration Plate Issuance. (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE AN INDIVIDUAL TO SHOW PROOF OF RESIDENCE AND LEGAL PRESENCE PRIOR TO THE ISSUANCE OF A REGISTRATION PLATE FOR A MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-52 reads as rewritten:

"**§ 20-52. Application for registration and certificate of title.**

(a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application form provided by the ~~Division.~~ Division and provide a valid North Carolina drivers license or special identification card issued pursuant to this Chapter. The application form must request all of the following information and may request other information the Division considers necessary:

(1) The owner's name.

(1a) If the owner is an individual, the following information:

a. The owner's mailing address and residence address.

~~b. The owner's social security number.~~

(1b) If the owner is a firm, a partnership, a corporation, or another entity, the address of the entity.

(2) A description of the vehicle, including the following:

a. The make, model, type of body, and vehicle identification number of the vehicle.

b. Whether the vehicle is new or used and, if a new vehicle, the date the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.

(3) A statement of the owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien.

~~The application form must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the motor vehicle registration laws and may not disclose the social security number for any other purpose. The social security number of a person who applies to register a vehicle or of a person in whose name a vehicle is registered is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).~~

(a1) The requirement to produce a valid North Carolina drivers license or special identification card under subsection (a) of this section shall not apply to the following:

(1) Out-of-state students who present a valid drivers license from their home state and a valid identification from the school being attended.

(2) Active duty military personnel who present a valid drivers license from their home state and a valid active duty military identification card.

(3) Any person submitting an application for a certificate of title, registration plate, and registration card for a house car, house trailer, motor home, or recreational vehicle, as defined by this Chapter.

(b) When such application refers to a new vehicle purchased from a manufacturer or dealer, such application shall be accompanied with a manufacturer's certificate of origin that is properly assigned to the applicant. If the new vehicle is acquired from a dealer or person located in another jurisdiction other than a manufacturer, the application shall be accompanied with such evidence of ownership as is required by the laws of that jurisdiction duly assigned by the disposer to the purchaser, or, if no such evidence of ownership be required by the laws of such other jurisdiction, a notarized bill of sale from the disposer."

SECTION 2. This act becomes effective July 1, 2007.

SENATE BILL 793: Strengthen Registration Plate Issuance

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 24, 2007
Introduced by:	Sen. Jenkins	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S793-CSTC-7		Committee Counsel

SUMMARY: ***Senate Bill 793 would require vehicle owners to show a valid NC drivers license or special identification card establishing residency when registering a motor vehicle.***

The PCS removes the exemption for individuals unable to obtain a license due to medical or physical reasons, as those individuals who are residents would be eligible to obtain a special identification card, and adds as an exemption applications for recreational vehicles and other vehicles which may serve as dwellings. The PCS also removes the current requirement that an owner provide their social security number when applying for a vehicle registration.

CURRENT LAW: G.S. 20-50 requires all vehicles intended to be operated upon any highway of this State to be registered with the Division of Motor Vehicles (DMV). G.S. 20-52 sets out the requirements for registration and certificate of title for a vehicle. The law requires that applications for certificates of title, registration plates, and registration cards for vehicles must provide the following information:

- Owner's name.
- If an individual, the mailing address, residence address, and social security number of the owner. If a firm, partnership, corporation, or other entity, the entity's address.
- A description of the vehicle, including the make, model, type of body, vehicle identification number, whether the vehicle is new or used, and if new, the dates of sale and delivery.
- A statement of the owner's title and all liens upon the vehicle, including names and addresses of lienholders in order of priority and the date and nature of each lien.

The DMV may request additional information it considers necessary. An owner's social security number may not be disclosed for any purpose other than administration of the motor vehicle registration laws. Applications for new vehicles must be accompanied by either a properly assigned manufacturer's certificate of origin if purchased from a manufacturer or dealer, or evidence of ownership as required in that jurisdiction if purchased from a dealer or person located in another jurisdiction other than a manufacturer, or, if no evidence of ownership is required by the laws of such other jurisdiction, a notarized bill of sale from the disposer.

BILL ANALYSIS: Senate Bill 793 would require owners applying for a certificate of title, registration plate, and registration card to provide a valid North Carolina drivers license, or a special identification card issued pursuant to the Motor Vehicles chapter. Any person who is a resident of the State is eligible for a special identification card under G.S. 20-37.7.

The bill would also add a new subsection providing three exceptions to the new requirement:

1) Out-of-state students presenting a valid license from their home state and a valid identification from the school being attended.

2) Active duty military personnel presenting a valid license from their home state and a valid active duty military identification card.

3) Registration applications for house cars, house trailers, motor homes, and recreational vehicles.

The bill would also eliminate both the requirement that an owner provide their social security number on an application, and the related provisions providing limited use of the social security number. G.S. 20-7 requires that a valid social security number must be given when an individual applies for a drivers license or special identification card.

EFFECTIVE DATE: This bill would become effective July 1, 2007.

S0793e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 999

Short Title:	DWI Technical Corrections.	(Public)
Sponsors:	Senators Rand; and Jones.	
Referred to:	Judiciary I (Civil).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MOTOR VEHICLE LAWS PERTAINING TO IMPAIRED DRIVING OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(24a)b. reads as rewritten:

"(24a) Offense Involving Impaired Driving. – Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. ~~Death by vehicle under~~ Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law."

SECTION 2. G.S. 20-17(a)(9) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(9) ~~Death by vehicle as defined in G.S. 20-141.4.~~Any offense set forth under G.S. 20-141.4."

SECTION 3. G.S. 20-139.1(b6) reads as rewritten:

"(b6) The Department of Health and Human Services shall post on a Web page ~~and file with the clerk of superior court in each county~~ a list of all persons who have a permit authorizing them to perform chemical analyses, the types of analyses that they can perform, the instruments that each person is authorized to operate, the effective dates of the permits, and the records of preventive maintenance. A court or administrative agency shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules."

SECTION 4. G.S. 20-28(c4) reads as rewritten:

"(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time ~~set forth in G.S. 20-17.8(c).~~that the conditional restoration is active."

SECTION 5. Section 33 of S.L. 2006-253 reads as rewritten:

"**SECTION 33.** Sections 20.1, 20.2, and the requirement that the Administrative Office of the Courts electronically record certain data contained in subsection (c) of G.S. 20-138.4, as amended by Section 19 of this act, become effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts. Section 22.4 becomes effective December 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date."

SECTION 6. G.S. 20-179(c) reads as rewritten:

"(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this ~~subsection~~ subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be ~~a matter~~ matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor."

SECTION 7. G.S. 20-28.2(b) reads as rewritten:

"(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture; Impaired Driving and Prior Revocation. – A judge may determine whether the vehicle

driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying offense involving impaired driving.

(2) A separate hearing after conviction of the defendant.

(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an ~~underlying~~ offense ~~involved~~ involving impaired driving, and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section."

SECTION 8. G.S. 20-28.2(b)(1) reads as rewritten:

"(b1) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; No License and No Insurance. – A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying offense involving impaired driving.

(2) A separate hearing after conviction of the defendant.

(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an ~~underlying~~ offense ~~involved~~ involving impaired driving, and: (i) the defendant was driving without a valid drivers license, and (ii) the defendant was not covered by an automobile liability policy.

...."

SECTION 9. G.S. 20-38.7 reads as rewritten:

"**§ 20-38.7. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions. ~~convictions and,~~

~~if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved.~~

(d) Following a new sentencing hearing in district court pursuant to subsection (c) of this section, a defendant has a right of appeal to the superior court only if:

(1) The sentence is based upon additional facts considered by the district court that were not considered in the previously vacated judgment, and

(2) The defendant would be entitled to a jury determination of those facts pursuant to G.S. 20-179.

A defendant who has a right of appeal under this subsection, gives notice of appeal, and subsequently withdraws the appeal shall have the sentence imposed by the district court reinstated by the district court as a final judgment that is not subject to further appeal."

SECTION 10. G.S. 20-17.8(b)(3) reads as rewritten:

"(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) ~~felony death by vehicle, G.S. 20-141.4(a1),~~ a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 11. G.S. 20-19(c3)(4) reads as rewritten:

"(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),~~ a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

SECTION 12. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a3), the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

SECTION 13. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to ~~three~~ five years from the date of restoration."

SECTION 14. G.S. 20-19(i) reads as rewritten:

"(i) When a person's license is revoked under ~~subdivision (1) or (9) of G.S. 20-17~~ G.S. 20-17(1) or G.S. 20-17(9), and the offense is one involving impaired driving and a fatality, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least ~~three years in accordance with the procedure in subsection (e) of this section.~~five years under this subsection if he provides the Division with satisfactory proof that:

(1) In the five years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol

beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to seven years from the date of restoration."

SECTION 15. G.S. 20-141.4(a6) reads as rewritten:

"(a6) Repeat Felony Death by Vehicle Offender. – A person commits the offense of repeat felony death by vehicle if:

(1) The person commits an offense under subsection (a1) or subsection (a5) of this section; and

(2) The person has a previous conviction under:

a. Subsection (a1) of this section;

b. Subsection (a5) of this section; or

c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

The pleading and proof of previous convictions shall be in accordance with the provisions of G.S. 15A-928.

A person convicted under this subsection shall be subject to the same sentence as if the person had been convicted of second degree murder. ~~who commits an offense under Subsection (a1) or Subsection (a5) of this section, and who has a previous conviction under~~

~~(1) Subsection (a1) of this section; or~~

~~(2) Subsection (a5) of this section; or~~

~~(3) G.S. 14-17 or G.S. 14-18, where the basis of that former conviction, as determined from the face of the indictment, was the unintentional death of another person while engaged in the offense of impaired driving under GS 20-138.1 or GS 20-138.2,~~

~~shall be subject to the same sentence as if the person had been convicted of second degree murder.~~"

SECTION 16. G.S. 20-138.4(a) reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge ~~involving impaired driving~~ in implied-consent case.**

(a) Any prosecutor shall enter detailed facts in the record of any case subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not ~~an offense involving impaired driving;~~ a case subject to the implied consent law; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in ~~the~~ a case ~~involving impaired driving.~~ subject to the implied consent law.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section."

SECTION 17. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 999
PROPOSED COMMITTEE SUBSTITUTE S999-CSRK-18 [v.1]

4/19/2007 4:20:13 PM

Short Title: DWI Technical Corrections. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MOTOR VEHICLE LAWS PERTAINING TO IMPAIRED DRIVING OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(24a)b. reads as rewritten:

"(24a) Offense Involving Impaired Driving. – Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. ~~Death by vehicle under~~ Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law."

SECTION 2. G.S. 20-17(a)(9) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(9) ~~Death by vehicle as defined in G.S. 20-141.4.~~Any offense set forth under G.S. 20-141.4."

SECTION 3. G.S. 20-139.1(b6) reads as rewritten:

"(b6) The Department of Health and Human Services shall post on a Web page ~~and file with the clerk of superior court in each county~~ a list of all persons who have a permit authorizing them to perform chemical analyses, the types of analyses that they can perform, the instruments that each person is authorized to operate, the effective dates of the permits, and the records of preventive maintenance. A court or administrative agency shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules."

SECTION 4. G.S. 20-28(c4) reads as rewritten:

"(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time ~~set forth in G.S. 20-17.8(c).~~that the conditional restoration is active."

SECTION 5. Section 33 of S.L. 2006-253 reads as rewritten:

"**SECTION 33.** Section 6 becomes effective August 21, 2006, and applies to hearings held on or after that date. Sections 20.1, 20.2, and the requirement that the Administrative Office of the Courts electronically record certain data contained in subsection (c) of G.S. 20-138.4, as amended by Section 19 of this act, become effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts. Section 22.4 becomes effective December 1, 2006. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date."

SECTION 6. G.S. 20-179(c) reads as rewritten:

"(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this ~~subsection~~ subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be ~~a matter~~ matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor."

SECTION 7. G.S. 20-28.2(b) reads as rewritten:

"(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture; Impaired Driving and Prior Revocation. – A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying offense involving impaired driving.

(2) A separate hearing after conviction of the defendant.

(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an ~~underlying~~ offense ~~involved~~ involving impaired driving, and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section."

SECTION 8. G.S. 20-28.2(b)(1) reads as rewritten:

"(b1) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; No License and No Insurance. – A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying offense involving impaired driving.

(2) A separate hearing after conviction of the defendant.

(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an ~~underlying~~ offense ~~involved~~ involving impaired driving, and: (i) the defendant was driving without a valid drivers license, and (ii) the defendant was not covered by an automobile liability policy.

...."

SECTION 9. G.S. 20-38.7 reads as rewritten:

"**§ 20-38.7. Appeal to superior court.**

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an

appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions. ~~convictions and, if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved.~~

(d) Following a new sentencing hearing in district court pursuant to subsection (c) of this section, a defendant has a right of appeal to the superior court only if:

(1) The sentence is based upon additional facts considered by the district court that were not considered in the previously vacated judgment, and

(2) The defendant would be entitled to a jury determination of those facts pursuant to G.S. 20-179.

A defendant who has a right of appeal under this subsection, gives notice of appeal, and subsequently withdraws the appeal shall have the sentence imposed by the district court reinstated by the district court as a final judgment that is not subject to further appeal."

SECTION 10. G.S. 20-17.8(b)(3) reads as rewritten:

"(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) ~~felony death by vehicle, G.S. 20-141.4(a1),~~ a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 11. G.S. 20-19(c3)(4) reads as rewritten:

"(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),~~ a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

SECTION 12. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a3), the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

SECTION 13. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to ~~three~~ five years from the date of restoration."

SECTION 14. G.S. 20-19(i) reads as rewritten:

"(i) When a person's license is revoked under ~~subdivision (1) or (9) of G.S. 20-17~~ G.S. 20-17(a)(1) or G.S. 20-17(a)(9), and the offense is one involving impaired driving and a fatality, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least ~~three years in accordance with the procedure in subsection (e) of this section.~~five years under this subsection if he provides the Division with satisfactory proof that:

(1) In the five years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any

other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to seven years from the date of restoration."

SECTION 15. G.S. 20-141.4(a6) reads as rewritten:

"(a6) Repeat Felony Death by Vehicle Offender. – A person commits the offense of repeat felony death by vehicle if:

(1) The person commits an offense under subsection (a1) or subsection (a5) of this section; and

(2) The person has a previous conviction under:

a. Subsection (a1) of this section;

b. Subsection (a5) of this section; or

c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

The pleading and proof of previous convictions shall be in accordance with the provisions of G.S. 15A-928.

A person convicted under this subsection shall be subject to the same sentence as if the person had been convicted of second degree murder. ~~who commits an offense under Subsection (a1) or Subsection (a5) of this section, and who has a previous conviction under~~

~~(1) Subsection (a1) of this section; or~~

~~(2) Subsection (a5) of this section; or~~

~~(3) G.S. 14-17 or G.S. 14-18, where the basis of that former conviction, as determined from the face of the indictment, was the unintentional death of another person while engaged in the offense of impaired driving under GS 20-138.1 or GS 20-138.2,~~

~~shall be subject to the same sentence as if the person had been convicted of second degree murder.~~"

SECTION 16. G.S. 20-138.4(a) reads as rewritten:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge ~~involving impaired driving.~~in implied-consent case.**

(a) Any prosecutor shall enter detailed facts in the record of any case subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is

not ~~an offense involving impaired driving;~~ a case subject to the implied consent law; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in ~~the~~ a case ~~involving impaired driving.~~ subject to the implied consent law.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section."

SECTION 17. 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.

SENATE BILL 999: DWI Technical Corrections

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 19, 2007
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: ***This act would make technical corrections to The Motor Vehicle Driver Protection Act of 2006. The act is effective when it becomes law.***

BACKGROUND: The Motor Vehicle Driver Protection Act, Session Law 2006-253, made numerous changes to laws relating to impaired driving, including: changing law enforcement procedure, the creation of criminal offenses for repeat offenders who seriously injure or kill other drivers, sentencing procedure, data collection and reporting on DWI cases, and the forfeiture of vehicles.

BILL ANALYSIS:

Section 1: Amends the definition of "offenses involving impaired driving" to add the new offenses created in the Act.

Section 2: Includes the new impaired driving offenses in the Act under the statutes that provide for drivers license revocation.

Section 3: Eliminates unnecessary duplication of the list of persons authorized to perform chemical analyses. Also adds "administrative agency" to the court as entities that can take judicial notice of the authorized chemical analyst.

Section 4: Amends the law so that the use of the interlock device is for the period of time that the conditional restoration of a license is in effect. The current version links the use to set periods set forth in the statute that may be different than the conditional restoration period.

Section 5: Corrects the effective date for the evidentiary rules in S.L. 2006-253. Also corrects the effective date for the medical exception added in SL 2006-253 for the interlock device. The current effective date of the change only allows an exception for offenses occurring after December 1, 2006.

Section 6:

Subsection (c) amendment: Adds prior convictions under the "aggravating" factors section of the sentencing law as a determination to be made by the judge, not the jury. The U.S. Supreme Court in Blakely held that juries need to find aggravating factors that could increase a sentence length; however, the fact of a prior conviction was one type of aggravating factor did not require a jury determination. Prior convictions under the "grossly aggravating" factors section had been included in SL 2006-253 as judicial determinations.

Subsection (c)(1)c. amendment: In SL 2006-253, the appellate procedure had provided for all "pending charges" to be resolved before a district court resentenced a defendant. If two charges were remanded in separate district courts for resentencing, it would have created a "never-ending" scenario, i.e., neither case could be resolved because each of the cases would remain unresolved ("pending"). The change allows the court to act, as the remanded cases would count as "prior convictions" under the added paragraph. This section references G.S. 20-38.7, which is amended in Section 9 below. The "pending charges" language is deleted in G.S. 20-38.7, and the court may consider any new "convictions." Consequently, even though a case is remanded back to district court for a new

sentencing, it would still count as a conviction, and could be used to aggravate the sentence in another remanded case, or a case which is being considered for the first time.

Section 7: This statute relates to vehicle forfeiture for driving impaired while driving with license revoked. Clarifies that the statute is referring to a sentencing hearing as a time when there may be a judicial determination of forfeiture. Also provides that the evidence must show that defendant is guilty of an underlying offense involving impaired driving while his license was revoked.

Section 8: The amendment makes the same corrections as in Section 7 in the statute that relates to vehicle forfeiture for driving impaired without a valid drivers license and liability insurance.

Section 9:

Subsection (c) amendment: Corrects the problem addressed in Section 6 above, where more than one case has been remanded and the court could not act until all pending charges are resolved. Allows the court to consider any new "convictions." The term "convictions" is amended in Section 6 to include cases that have been remanded for new sentencing hearings.

Subsection (d) amendment: This change prevents a defendant from continuing to appeal a district court sentence after a case has been appealed to Superior Court and then the appeal is withdrawn. Under the change in SL 2006-253, an appeal to superior court vacates the sentence. If the case is remanded, or the defendant withdraws his appeal, the district court resentences the defendant using facts (e.g., convictions) that were not available at the original sentencing. If new facts are used to resentence the defendant, then he would have the right to appeal the new sentence. However, if the new sentence is appealed (again resulting in a vacated sentence) and the appeal is subsequently withdrawn, then the new sentence imposed by the district court is reinstated and no further appeal is allowed.

Section 10: Adds the new felony offenses in SL 2006-253 to the statute that provides for use of an interlock device.

Section 11: Adds the new felony offenses in SL 2006-253 to the statute that provides for restrictions on persons who have had their licenses revoked.

Section 12: Adds one of the new felony offenses in SL 2006-253 (felony serious injury by vehicle) to the statute that provides for a mandatory license revocation period of four years, with conditional restoration.

Section 13: Adds one of the new felony offenses in SL 2006-253 (aggravated felony serious injury by vehicle) to the statute that provides for a permanent license revocation, with conditional restoration.

Section 14: Adds a new revocation period and conditional restoration period for persons who had an offense involving impaired driving and a fatality. The addition of the new, more serious, offenses required an increase in the periods of time for both revocation and conditional restoration.

Section 15: Clarifies that the repeat felony death by vehicle statute is an offense, and not a sentencing enhancement.

Section 16: Clarifies that the statute applies to cases involving the "implied-consent law," as currently stated in subsection (a) of the statute.

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

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, April 24, 2007
10:00 a.m.
Room 1028

1 Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 236	Regulation of Professional House Moving	Senator Jenkins
SB 793	Strengthen Registration Plate Issuance	Senator Jenkins
SB 999	DWI Technical Corrections	Senator Rand
SB 1357	Motor Vehicle Chop Shop Act	Senator ~~Jenkins~~ Graham

Adjournment.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 24, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valauri	Nationwide
	Fox
	NC Trucking Association
VL McBride	NCDOT
Henry Jones	Attorney Raleigh
	NCPPA
Cameron Whitaney	Elon University

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 24, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chy Byers	NCMS
Woodson	NCFB
John Poland	NCASA
Christine Wunsche	106 - Daily Bulletin
Barbara Conoley	BBCOA
Beau Morris	NCMC
Alison Roach	NC DMV
Richard Howland	NC DMV
Troy D. Page	N.C. Sentencing Commission
Chris Dill	Sen Tom
Joey Gardner	DMV License + Theft

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 24, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Johanna Reese	
Brenda Freeman	DMV
Cathy Matthews	DMV
Kimberly Overton	Conference of DA's
Daniel Bauer	ACC
Joe Stewart	IFNC
Jeff Mixon	Civitas Institute
D.L. Hunter	Char-Meck Police Dept.
Boyd Cauble	City of Charlotte
Matt Osborne	AOC
Jim Drennan	IOG

SENATE JUDICIARY I COMMITTEE
(Civil)

April 26, 2007
10 a.m. --Room 1128

MINUTES

The Senate Judiciary Committee met Tuesday, April 26 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Member Charlie Albertson, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. David Hoyle, Sen. Clark Jenkins, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Tony Rand, Sen. Richard Stevens and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:09 a.m. Sen. Nesbitt then told the committee that two bills scheduled for April 26 would be pulled from the agenda. due to complications within the bills themselves. These bills are Senate Bill 88 and Senate Bill 1204. Senate Bill 1357 was also pulled due to the illness of its sponsor, Sen. Malcolm Graham.

Sen. Nesbitt then called on Senator Austin Allran for Senate Bill 82, a bill creating felonious charges for child endangerment. A proposed committee substitute was distributed to the committee, and it was adopted. Sen. Allran explained to the committee that although felony child abuse statutes exist in North Carolina law, there is no such equivalent for child endangerment. Sen. Allran called this a "loophole" in the law and read examples of instances where children were placed in dangerous situations—sometimes fatally—and the parents were charged with crimes other than endangerment. He also noted that 46 other states have similar laws.

Sen. Nesbitt said that most criminal statutes "have good definition" and asked Sen. Allran who would be the judge whether or not to charge with endangerment.

Sen. Brunstetter asked if this bill was similar to the laws current in the noted 46 other states. Committee staff answered that this was the North Carolina standard.

Discussion continued and Sen. Nesbitt said that he had concerns with the bill because the bill does not define intent. Sen. Albertson praised the bill, saying he "commended Sen. Allran for bringing this on" and that there "ought to be a way to fix this."

The bill is now referred to subcommittee which members include Senators, Clodfelter, McKissick, and Brunstetter.

Sen. Nesbitt then called on Sen. Rand to discuss Senate Bill 1211, a bill that requires law enforcement officers to fingerprint someone when charged with driving while impaired or driving while license revoked. Sen. Rand explained that currently a person can be

charged with multiple DWIs under aliases. A proposed committee substitute was distributed to the committee and Sen. Rand moved for its adoption. The motion carried.

Sen. Tillman moved for favorable report. Discussion continued and Sen. Berger noted concern with the bill at Line 24, reading "to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation." Sen. Berger was concerned that "and photographed" should be added to the line.

The bill was amended to read as such. Sen. Berger moved for the amendment's adoption and the motion passed unanimously. Sen. Tillman moved that the pcs for SB 1211 and the amendment be rolled into a new committee substitute and given a favorable report, unfavorable as to original bill. The motion passed unanimously. The meeting was adjourned at 10:55 a.m.

Copies of Senate Bill 82, the proposed committee substitute for SB 82, Bill Analysis for the pcs for SB 82, Senate Bill 1211, the proposed committee substitute for SB 1211, the Bill Analysis for the pcs to SB 1211 and the amendment to the pcs for SB 1211 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, and 7 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 82

Short Title:	Endangerment of Juvenile.	(Public)
Sponsors:	Senators Allran; Atwater, Bingham, Blake, Boseman, Brown, Clodfelter, Dalton, Forrester, Goodall, Hunt, Jacumin, Jenkins, Jones, Kinnaird, Purcell, Queen, Shaw, Snow, Soles, Stevens, and Weinstein.	
Referred to:	Judiciary 1 (Civil).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF ENDANGERING A JUVENILE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.5. Endangering a juvenile.**

(a) Definitions. – The following definitions apply in this section:

(1) Juvenile. – Defined in G.S. 7B-101.

(2) Serious bodily injury. – Bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ or that results in prolonged hospitalization.

(3) Serious injury. – The term includes physical injury that causes great pain and suffering and also includes serious mental injury.

(b) Offense. – A parent or any other person providing care to or supervision of a juvenile whose willful act or omission in the care of the juvenile is so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class G felony unless the offense results in serious injury or serious bodily injury to the juvenile. An offense under this subsection that results in serious injury is a Class F felony. An offense under this subsection that results in serious bodily injury is a Class E felony.

(c) No Prosecution for Voluntary Abandonment of Certain Infants. – A parent who abandons an infant less than seven days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 82
PROPOSED COMMITTEE SUBSTITUTE S82-CSST-36 [v.2]

4/25/2007 7:52:57 PM

Short Title: Endangerment of Juvenile. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF ENDANGERING A JUVENILE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.5. Endangering a juvenile.**

(a) A parent or any other person providing care to or supervision of a juvenile less than 16 years of age whose willful act or omission in the care or supervision of the juvenile is so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class G felony unless the offense results in serious injury or serious bodily injury to the juvenile. An offense under this subsection that results in serious injury is a Class F felony. An offense under this subsection that results in serious bodily injury is a Class E felony. For purposes of this section, the term 'serious bodily injury' shall have the same meaning as in G.S. 14-318.4(a3).

(b) The felony of endangering a juvenile is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) A parent who abandons an infant less than seven days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 82: Endangerment of Juvenile

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	April 25, 2007
Introduced by:	Sen. Allran	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S82-CSST-36		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 82 would create a new criminal offense for endangering a juvenile.

[As introduced, this bill was identical to H1843, as introduced by Reps. Clary, Glazier, which is currently in House Juvenile Justice.]

CURRENT LAW: The General Statutes provide for criminal charges to be brought for felony child abuse and for misdemeanor child abuse. The chart below describes those charges and the level of punishment.

Cite	Age of victim	Relationship of Defendant to victim	Type of harm to victim	Level of punishment
G.S.14-318.4(a)	Child less than 16 years old	Parent or other person providing care to or supervision of child	➢Intentional infliction of serious physical injury ➢Intentional commits an assault which results in serious physical injury	Class E felony
G.S. 14-318.4(b)	Child less than 16 years old	Parent or other person providing care or supervision of child	Commits, permits, or encourages any act of prostitution with or by the juvenile	Class E felony
G.S. 14-318.4(a2)	Child less than 16 years old	Parent or legal guardian	Commits or allows to commission of any sexual act upon the juvenile	Class E felony
G.S. 14-318.4(a3)	Child less than 16 years old	Parent or other person providing care to or supervision of child	➢Intentional infliction any serious bodily injury ➢Intentionally commits an assault resulting in any serious bodily injury or results in permanent or protracted loss or impairment of any mental or emotional function	Class C felony
G.S. 14-318.2(a)	Child less than 16 years old	Parent or other person providing care to or supervision of	By other than accidental means: ➢Inflicts physical injury ➢Allows physical injury to be inflicted ➢Creates or allows to be created a substantial risk of physical injury	Class 1 misdemeanor

BILL ANALYSIS: The proposed committee substitute would create the following new criminal charges:

Cite	Age of victim	Relationship of Defendant to victim	Type of harm to victim	Level of punishment
G.S. 14-318.5(a)	Juvenile less than 16 years old	Parent or other person providing care to or supervision of	Willful act or omission in the care or supervision is so gross, wanton and culpable as to show reckless disregard for human life, with no serious injury or serious bodily injury to the juvenile	Class G felony
G.S. 14-318.5(a)	Same as above	Same as above	Same, but serious injury to the juvenile	Class F felony
G.S. 14-318.5(a)	Same as above	Same as above	Same, but serious bodily injury	Class E felony

EFFECTIVE DATE: Effective December 1, 2007, and applies to offenses committed on or after that date.

S0082e1-SMST-CSST-36

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1211

Short Title:	Require Fingerprinting for DWI/DWLR.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FINGERPRINTING OF ANY PERSON ARRESTED FOR ANY OFFENSES INVOLVING IMPAIRED DRIVING OR FOR DRIVING WHILE LICENSE REVOKED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-502 reads as rewritten:

"**§ 15A-502. Photographs and fingerprints.**

(a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:

(1) Arrested or committed to a detention facility, or

(2) Committed to imprisonment upon conviction of a crime, or

(3) Convicted of a felony.

It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation. It shall be the duty of the arresting law enforcement agency to cause a person charged with any offense involving impaired driving, as defined in G.S. 20-4.01(24a), or if the revocation is for an Impaired Driving License Revocation as defined in G.S. 20-28.2, who cannot be identified by a valid form of identification, to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(a1) All fingerprints taken under this section that are required to be submitted to the State Bureau of Investigation shall be submitted through an automated fingerprint identification system if the agency taking the fingerprints has such a system.

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles."

(c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under Article 21 of Chapter 7B of the General Statutes.

(d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.

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

SECTION 2. This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1211
PROPOSED COMMITTEE SUBSTITUTE S1211-CSRK-19 [v.2]

4/24/2007 4:02:12 PM

Short Title: Require Fingerprinting for DWI/DWLR. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FINGERPRINTING OF ANY PERSON ARRESTED FOR ANY OFFENSES INVOLVING IMPAIRED DRIVING OR FOR DRIVING WHILE LICENSE REVOKED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-502 reads as rewritten:

"**§ 15A-502. Photographs and fingerprints.**

(a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:

(1) Arrested or committed to a detention facility, or

(2) Committed to imprisonment upon conviction of a crime, or

(3) Convicted of a felony.

(a1) It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(a2) If the person cannot be identified by a valid form of identification, it shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of:

(1) Any offense involving impaired driving, as defined in G.S. 20-4.01(24a), or

(2) Driving while license revoked if the revocation is for an Impaired Driving License Revocation as defined in G.S. 20-28.2

to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles."

(c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under Article 21 of Chapter 7B of the General Statutes.

(d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.

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

SECTION 2. This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1211:
Require Fingerprinting for DWI/DWLR

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 25, 2007
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: ***This act would require an arresting law enforcement officer to fingerprint someone who is being charged with driving while impaired, or driving with a revoked license based on an Impaired Driving License Revocation, if the person does not have a form of valid identification. The act becomes effective October 1, 2007, and applies to offenses occurring on or after that date.***

CURRENT LAW: An arresting law enforcement agency is required to fingerprint a person charged with a felony, which would include felony offenses under Chapter 20. However, photographs or fingerprints of persons charged with a Class 2 or Class 3 misdemeanors under Chapter 20 are not authorized.

BILL ANALYSIS: The act would require an arresting law-enforcement agency to take fingerprints, if the person cannot be identified by a valid form of identification, if a person is charged with:

- Any offense involving impaired driving.
- Driving while license revoked if the revocation is for an Impaired Driving License Revocation, as defined by statute.

The agency would be required to forward the fingerprints to the State Bureau of Investigation.

EFFECTIVE DATE: The act becomes effective October 1, 2007, and applies to offenses occurring on or after that date.

S1211e1-SMRK

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 7

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/-5/17

S. B. No. 1511 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Berger

1 moves to amend the bill on page 1, line 24

2 ( ) WHICH CHANGES THE TITLE

3 by inserting the following words

4 after the word "fingerprinted"

5

6 "and photographed"

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Monday, April 30, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1211** Require Fingerprinting for DWI/DWLR.

Draft Number:	PCS 55436
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 26, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tara Baitshotts	Leesville Road Middle School
Lyn Howes	PCANC
AL DITCH	DOA/YAIO
Mandy Locke	News & Observer
Brandy Bynum	Action for Children NC
Stephanie Nantz	YAIO/DOA
Christine Wunsche	106 - Daily Bulletin
Roz Sawyer	NC Child Care Coalition
Gary Robertson	AP
Diana Fleming	GAL/AOC
Soren Schmidt	Action for Children NC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 26, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TROY PAGE	N.C. SENTENCING COMMISSION
Joey Gardner	DMV
	NCFPC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — April 26, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Mixon	Civitas Institute
Kathy Hawkins	Progress Energy
IKE Avery	ATTORNEY
Peg Dorer	Conference of DAs
Amber Barwick	Conference of DAs
Selena Barnes	Child Fatality Task Force
Paul Lanier	Child Fatality Task Force
Mike Abraczinskas	NCDENR - DAQ
Paul Gordey	NCDENR - DAQ
Brian Phillips	NC DENR - DAQ

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Thursday, April 26, 2007
10:00 a.m.
Room 1027

1. **Call Meeting to Order.**

2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 82	Endangerment of Juvenile.	Senator Allran
SB 88	Clarify Oaths	Senator Kinnaird
SB 1204	New Civil Penalties for Emissions Violations.	Senator Nesbitt, Jr.
SB 1211	Require Fingerprinting for DWI/DWLR.	Senator Rand
SB 1357	Motor Vehicle Chop Shop Act	Senator Graham

Adjournment.

SENATE JUDICIARY I COMMITTEE
(Civil)

May 1, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Thursday, May 1 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chair Dan Clodfelter, Member Charlie Albertson, Sen.Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Malcolm Graham, Sen. David Hoyle, Sen. Clark Jenkins, Sen. Vernon Malone, Sen. Floyd McKissic, Sen. Tony Rand, Sen. Richard Stevens and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:20 a.m. and recognized pages serving for the committee. He welcomed the pages and then called on Senate Bill 869, sponsored by Sen. Boseman. Chairman Nesbitt told the committee that he was delighted to have the Honorable Beverly Purdue, Lieutenant Governor, to speak on the bill. Sen. Boseman was recognized and told Chairman Nesbitt that she would like for the Lieutenant Governor to go ahead and speak on the bill.

Staff Attorney Hal Pell was called by Chairman Nesbitt to explain the bill before calling on Lt. Gov.. Purdue. Mr. Pell told the Committee Senate Bill 869 called on persons required to register on the North Carolina sex offender registry to include any identifiers used for communicating on the Internet. He noted that there was a Proposed Committee Substitute for the bill. The PCS was distributed to Committee members and was approved for discussion unanimously via a motion by Sen. Albertson.

Chairman Nesbitt recognized Lt. Gov. Purdue and thanked her for coming to the committee. Ms. Purdue said that the bill "isn't fluff," continuing that the bill was a twentieth century way to fix a current problem. The bill is a tool for law enforcement, she said, for law enforcement. Speaking of statistics, she noted that one in seven children receive a sexual solicitation each year.

Discussion then ensued among members about the bill and Chairman Nesbitt recognized Sen. McKissick. Sen. McKissick said that the legislation was timely and asked what methods would be in place for find those who do not register. Sen. Boseman said there would be times when someone could get around it and called on William Guidera, Vice President of Government and State Affairs for News Corporation. Mr. Guidera told the committee that he knew that predators would try to avoid registering, but that it makes it an offense and web hosts can run databases to identify those using identifiers to attract minors.

Sen. Brunstetter asked for someone to walk through the bill from start to finish. Chairman Nesbitt then recognized Will Polk of the Governor's Office. Mr. Polk said that the current

process is that any person convicted of a sex offense has to fill out a form with the offender's address. After the individual has ten days to register with local law enforcement.

Discussion continued and Sen. Brown commented that he did not think offenders should be allowed to use a computer at all and asked if an offender's computer could be bugged to monitor computer activity among offenders. Chairman Nesbitt said that could be possible future legislation and added that it was a tool to find predators. Sen. Berger thanked Sen. Boseman and said the bill was a step in the right direction. Sen. Berger asked if one hires a person that was an offender would the business email address have to be registered. Mr. Pell said it would be the person's individual identifier. Sen. Berger then noted that there are problems with persons using work computers for predatory activity. Mr. Polk said that they would have to register any email addresses given, but all email addresses in a company would not have to be registered. Mr. Polk explained that the onus in on the individual and not the employer.

Sen. Brunstetter noted page seven, line 27 and asked about a potential safe harbor for web hosting providers that misidentify offenders. Mr. Polk explained that it gives protection for the hosting companies. Sen. Rand asked if someone is mistakenly identified as a sex offender they have no recourse against the web hosting company. Sen. Rand then offered an amend bill on page 7, line 29 to read "entity's blocking a person's to the entity's service where the person is not subject to registration under the sex offender registry laws, or for criminal actions against third person by a person using the entity's system."

Chairman Nesbitt then displaced the bill to recognize Sen. Clodfelter regarding Senate Bill 1482, noting that the bill was time sensitive. The bill exempts certain subdivision plats from state statutory requirements in subdivisions located outside a city of 500,000 and that has not received a certificate of approval from the North Carolina Division of Highways.

A Proposed Committee Substitute was distributed to members and accepted for discussion by a motion by Sen. Clodfelter. Sen. Clodfelter explained that the bill dealt with street platting in subdivisions, noting that subdivisions had paved roads that were not in accordance with Department of Transportation guidelines but did comply with municipal requirements. Sen. Berger asked what standards the streets were not complying to. Sen. Clodfelter said there was a debate between the DOT and the City of Charlotte of which set of guidelines better served subdivision streets. Sen. Berger then asked if these streets were accepted for DOT maintenance. Sen. Clodfelter said that maintenance was not an issue with the bill.

Sen. Brunstetter motioned for favorable report. The motion passed unanimously.

Chairman Nesbitt then called on Senate Bill 1161 and recognized Sen. Hoyle to explain the bill. Sen. Hoyle explained the bill as one to allow taxpayers to rely upon verbal advice from the North Carolina Department of Revenue. Sen. Hoyle praised the Department of

Revenue and then said they had a difficult job. He continued that mistakes had occurred among small business, especially bakeries who avoided charging a two percent sales tax. Sen. Hoyle noted one bakery that was audited and now would owe all profits since the bakery was founded.

Sen. Hoyle then gave an example of a business that received misinformation from the Department of Revenue. He then asked for Chairman Nesbitt to call a subcommittee. Sen. Tillman asked if a motion for favorable report was needed. Chairman Nesbitt replied that it wasn't needed as of yet and named a subcommittee with Sens. Rand, Hoyle and Brunstetter as members

Senate Bill 869 was recalled for discussion. Sen. Rand motioned to accept an amendment to the bill that was drafted earlier in the meeting. Sen. Rand raised concerns regarding the language of the amendment with staff. Sen. Rand noted that the second part of the amendment read as if a party could criminally hurt a sex offender and be immune from prosecution. Chairman Nesbitt said that he did not want to but would have to as time had run out and the Commerce Committee meets in the same room immediately after Judiciary.

The meeting was then adjourned at 11 a.m.

Copies for Senate Bill 869, a Proposed Committee Substitute for SB 869, a Bill Analysis for the PCS for / SB 869, Senate Bill 1482, a Proposed Committee Substitute for SB 1482, a Bill Analysis for the PCS for SB 1482, Senate Bill 1161, a Bill Analysis for SB 116, and the Rand amendment are attached to these Minutes as Attachments I, II, III, IV, V, and VI, VII, VIII, and IX respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 869*

Short Title:	Sex Offender/Register E-Mail Address.-AB	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary I (Civil).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD FELONY CHILD ABUSE TO THE LIST OF SEX OFFENDER REGISTRY OFFENSES WHEN THE OFFENSE INVOLVES PROSTITUTION OF A JUVENILE OR THE COMMISSION OF A SEXUAL ACT UPON A JUVENILE, TO REQUIRE THAT A SEX OFFENDER REGISTER HIS OR HER ELECTRONIC MAIL ADDRESS OR OTHER ONLINE IDENTIFIER IN THE STATEWIDE SEX OFFENDER REGISTRY, TO ALLOW LIMITED RELEASE OF ONLINE IDENTIFIER INFORMATION IN THE SEX OFFENDER REGISTRY TO CERTAIN ENTITIES THAT PROVIDE ELECTRONIC MAIL SERVICES AND OTHER INTERNET SERVICES FOR THE PURPOSE OF SCREENING ONLINE USERS, TO PROVIDE THAT THE COURT MAY ORDER A CONVICTED SEX OFFENDER WHO FAILS TO REGISTER AS A SEX OFFENDER TO FORFEIT CERTAIN LICENSING PRIVILEGES, TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP PROCEDURES TO ENSURE TIMELY NOTIFICATION OF THE DIVISION OF CRIMINAL STATISTICS AND SHERIFFS OF PERSONS REQUIRED TO REGISTER WHO ARE NOT SENTENCED TO ACTIVE TIME, AND TO APPROPRIATE FUNDS FOR THE GOVERNOR'S CRIME COMMISSION TO USE TO AWARD AS MATCHING GRANTS TO ELIGIBLE SHERIFFS' OFFICES TO ENHANCE AND SUPPORT THEIR EFFORTS TO ENFORCE THE STATE'S SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "Aggravated offense" means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving

vaginal, anal, or oral penetration with a victim who is less than 12 years old.

(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) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

~~(1d)~~(1e) "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.

(1f) "Entity" means a business or organization that provides Internet service, electronic communications service, remote computing service, online service, electronic mail service or electronic instant message or chat services whether the business or organization is within or without the State.

(1g) "Instant Message or IM" means a form of real-time communication between two or more people based on typed text. The text is conveyed via computers connected over a network such as the Internet.

~~(1e)~~(1h) "Institution of higher education" means any postsecondary public or private educational institution, including any trade or professional institution, college, or university.

(1i) "Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

(1j) "Internet Protocol Address" means an IP address (Internet Protocol Address) and is a unique address that devices use in order to identify and communicate with each other on a computer network utilizing the Internet Protocol standard (IP).

~~(1f)~~(1k) "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)~~(1l) "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)~~(1m) "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)~~(1n) "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.

(1o) "Online identifier" includes all of the following: electronic mail address and instant message, chat or other Internet communication name or identity information and IP address.

(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, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.

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. 14-27.5A (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. 14-43.13 (subjecting or maintaining a person for sexual servitude), 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).~~act), G.S. 14-318.4(a1)(parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). 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."

SECTION 2. G.S. 14-208.7(b) reads as rewritten:

"(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~~student;

(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.~~employed; and

(7) Any online identifier that the person uses or intends to use. The registration form shall also require that the person execute a consent form consistent with applicable law that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's online identifier in the registry. The executed consent form shall be submitted with the registration form.

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."

SECTION 3. G.S. 14-208.8(a) reads as rewritten:

"(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),~~(6), and (7), 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."

SECTION 4. The catch line for G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of online identifier; change of academic status or educational employment status.**"

SECTION 5. G.S. 14-208.9 is amended by adding a new subsection to read:

"(e) A person required to register shall not use any online identifier to communicate over the Internet that is not included in the registration information provided pursuant to G.S. 14-208.7. If a person required to register changes or obtains a new online identifier, the person shall report in person to the sheriff in the county where the person is registered to provide the online identifier information to the sheriff before using the online identifier. The person shall also execute a consent form consistent with applicable law that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's changed or new online identifier in the registry."

SECTION 6. G.S. 14-208.9A is amended by adding a new subdivision to read:

"(5) If the person has an online identifier, the person shall update the person's consent form or execute a new consent form that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's changed or new online identifier in the registry as necessary."

SECTION 7. G.S. 14-208.11(a) is amended by adding a new subdivision to read:

"(10) Fails to provide an online identifier that the person uses or intends to use as required by this Article."

SECTION 8. G.S. 14-208.14(a) is amended by adding a new subdivision to read:

"(5) To maintain a system allowing an entity to compare the database of registered users of that entity to the list of online identifiers of persons in the central sex offender registry in accordance with this Article."

SECTION 9. Part 2 of Article 27A is amended by adding a new section to read:

"§ 14-208.15A. Release of online identifiers to entity; fee.

(a) The Division may release registry information regarding a registered offender's online identifier to an entity for the purpose of allowing the entity prescreening users or for comparison with information held by the entity as provided by this section.

(b) An entity desiring to prescreen its users or compare its database of registered users to the list of online identifiers of persons in the statewide registry may apply to the Division to access the information. An entity that complies with the criteria developed by the Division regarding the release and use of the online identifier information and pays the fee established by the Division in accordance with this section may screen new users or compare its database of registered users to the list of online identifiers of persons in the statewide registry as frequently as the Division may allow for the purpose of identifying a registered user associated with an online identifier contained in the statewide registry.

(c) The Division may charge an entity that submits a request to access and review the database of online identifiers of persons in the statewide registry a fee of one hundred dollars ($100.00). The fee shall be included with the request to access the database. The fee may be charged for each request to access the database. Fees collected under this section shall be credited to the Department of Justice and applied to the cost of providing this service.

(d) The Division shall develop criteria and adopt rules regarding the release and use of online identifier information. The criteria shall include a requirement that the information obtained from the statewide registry shall not be disclosed for any purpose other than for prescreening its users or comparing the database of registered users of the entity against the list of online identifiers of persons in the statewide registry to protect children from online sexual predators and shall also require that the entity notify the Division when a comparison of the online identifier information and the entity users indicates that a registered offender's online identifier is being used on the entity's system."

SECTION 10. Part 2 of Article 27A of Chapter 14 of the General Statutes is amended by adding the following new section to read:

"§ 14-208.18. Forfeiture of licensing privileges for failure to register on the sex offender and public protection registry.

(a) As used in this section, the term:

(1) 'Licensing board' means a department, division, agency, officer, board, or other unit of State government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.

(2) 'Licensing privilege' means the privilege of a person to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.

(3) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows a person to engage in an occupation or profession.

(b) Upon a finding by the sentencing judge that a person who has a reportable conviction or is a recidivist has failed to register with the statewide sex offender and public protection registry, and upon findings as to any specific licensing privileges held by the person, the court may revoke some or all of the privileges until the person has registered with the registry. Upon an order revoking the privileges of a person who has failed to register, the clerk of superior court shall notify the appropriate licensing board that the person has failed to register and that the person's licensing privileges are revoked until the licensing board receives proof of certification by the clerk that the person has registered.

(c) A person may file a request with the clerk of superior court for certification that the person has registered with the statewide registry. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with the registration requirement may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the registry requirement. The clerk shall provide a form to be used for a request for certification. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with registering on the statewide registry has complied with or is no longer subject to the registry requirement, then the clerk shall certify that the person has met the requirements of or is no longer subject to the requirements and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the person may petition the district court for a reinstatement of the person's privileges. The court may order the privileges reinstated conditioned upon compliance with this Article. The court may order the privileges reinstated if the person has complied with or is no longer subject to the registry requirement. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with this Article, the clerk of superior court shall certify that the person has complied with or is no longer subject to the requirements of this Article and provide a copy of the certification to the person. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) A person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) of this section to each licensing agency to which the person applies for reinstatement of licensing privileges. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that a person's licensing privileges are revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to

a person shall remain in full force and effect until the board receives certification under this section that the person has complied with the requirements of this Article. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with this Article shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section."

SECTION 11. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-13.1. Revocation when licensing privilege forfeited for failure to register on the sex offender and public protection registry.**

(a) Upon receipt of a court order, pursuant to G.S. 14-208.18, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records, report the action within 30 days to the Department of Justice, Division of Criminal Statistics, and follow the normal post-revocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Division of Criminal Statistics that the licensee has complied with the registry requirements under Part 2 of Article 27A of Chapter 14 of the General Statutes or is no longer subject to the registry requirements that were the basis for the revocation.

(b) If at the time the court revokes a license pursuant to subsection (a) of this section the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 14-208.18, then the revocation period imposed by the occupational licensing board applies.

(c) Immediately upon certification by the clerk of superior court that the licensee whose license was revoked pursuant to subsection (a) of this section because of failure to comply with the registry requirement is in compliance with or no longer subject to the registry requirement, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

SECTION 12. By December 1, 2007, the Administrative Office of the Courts, in consultation with the North Carolina Department of Justice, North Carolina Department of Correction, and the North Carolina Sheriffs' Association shall develop a procedure to ensure timely notification to the Division of Criminal Statistics, Department of Justice, and to sheriffs regarding any person subject to registration under Article 27A of Chapter 14 of the General Statutes who does not receive an active term of imprisonment, as specified in G.S. 14-208.7(a).

SECTION 13.(a) There is appropriated from the General Fund to the Department of Crime Control and Public Safety the sum of five hundred thousand dollars ($500,000) for fiscal year 2007-2008 to be allocated to the Governor's Crime Commission to award as grants to eligible sheriffs' offices to assist with the enforcement of the State's sex offender laws: The grants shall be awarded specifically to enhance and support law efforts by sheriffs to do the following: (i) process and conduct

in-person sex offender registrations, (ii) monitor compliance of sex offenders as required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct activities to investigate and apprehend persons who commit reportable offenses as defined under Article 27A of Chapter 14 of the General Statutes. The grants shall be awarded on a matching basis of one State dollar ($1.00) for every one non-State dollar ($1.00).

SECTION 13.(b) The Commission shall establish the criteria regarding the eligibility and amount of the awards for the grants established pursuant to this section. The grant criteria shall include consideration of all of the following:

(1) The number of convicted sex offenders in the county of the applicant.

(2) The level of community support for the grant award.

(3) Whether the application identifies a problem that is consistent with the purposes of this initiative.

(4) The development and maintenance by the applicant with other public safety agencies to regularly exchange information and intelligence.

(5) Whether the application articulates clearly the jurisdiction's goals, outcomes, and objectives and describes the accountability system and performance measures to determine progress towards achieving them.

SECTION 13.(c) Funds appropriated by this section shall not revert to the General Fund but shall remain with the Commission for the purposes described in this section.

SECTION 13.(d) The funds appropriated by this section shall supplement, and not supplant, existing funds and services provided for the tracking of registered sex offenders. The funds appropriated by this section shall be subject to established fiscal controls, annual reporting, and accountability requirements specified by the Commission.

SECTION 14. Section 12 of this act is effective when it becomes law. Section 13 of this act becomes effective July 1, 2007. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 869*
PROPOSED COMMITTEE SUBSTITUTE S869-CSRK-11 [v.4]

4/30/2007 11:24:05 AM

Short Title: Sex Offender/Register E-Mail Address.-AB (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD FELONY CHILD ABUSE TO THE LIST OF SEX OFFENDER REGISTRY OFFENSES WHEN THE OFFENSE INVOLVES PROSTITUTION OF A JUVENILE OR THE COMMISSION OF A SEXUAL ACT UPON A JUVENILE, TO REQUIRE THAT A SEX OFFENDER REGISTER HIS OR HER ELECTRONIC MAIL ADDRESS OR OTHER ONLINE IDENTIFIER IN THE STATEWIDE SEX OFFENDER REGISTRY, TO ALLOW LIMITED RELEASE OF ONLINE IDENTIFIER INFORMATION IN THE SEX OFFENDER REGISTRY TO CERTAIN ENTITIES THAT PROVIDE ELECTRONIC MAIL SERVICES AND OTHER INTERNET SERVICES FOR THE PURPOSE OF SCREENING ONLINE USERS, TO PROVIDE THAT THE COURT MAY ORDER A CONVICTED SEX OFFENDER WHO FAILS TO REGISTER AS A SEX OFFENDER TO FORFEIT CERTAIN LICENSING PRIVILEGES, TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP PROCEDURES TO ENSURE TIMELY NOTIFICATION OF THE DIVISION OF CRIMINAL INFORMATION AND SHERIFFS OF PERSONS REQUIRED TO REGISTER WHO ARE NOT SENTENCED TO ACTIVE TIME, AND TO APPROPRIATE FUNDS FOR THE GOVERNOR'S CRIME COMMISSION TO USE TO AWARD AS MATCHING GRANTS TO ELIGIBLE SHERIFFS' OFFICES TO ENHANCE AND SUPPORT THEIR EFFORTS TO ENFORCE THE STATE'S SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "Aggravated offense" means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or

the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

(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 Information of the Department of Justice.

(1d) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

~~(1d)~~(1e) "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.

(1f) "Entity" means a business or organization that provides Internet service, electronic communications service, remote computing service, online service, electronic mail service or electronic instant message or chat services whether the business or organization is within or outside the State.

(1g) "Instant Message or IM" means a form of real-time text communication between two or more people. The communication is conveyed via computers connected over a network such as the Internet.

~~(1e)~~(1h) "Institution of higher education" means any postsecondary public or private educational institution, including any trade or professional institution, college, or university.

(1i) "Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

~~(1f)~~(1j) "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)~~(1k) "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)~~(1l) "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)~~(1m) "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.

(1n) "Online identifier" includes all of the following: electronic mail address and instant message screen name, user ID, chat or other Internet communication name or identity information.

(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, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.

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. 14-27.5A (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. 14-43.13 (subjecting or maintaining a person for sexual servitude), 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).~~act), G.S. 14-318.4(a1)(parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). 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."

SECTION 2. G.S. 14-208.7(b) reads as rewritten:

"(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~~student;

(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.~~employed; and

(7) Any online identifier that the person uses or intends to use. The registration form shall also require that the person execute a consent form consistent with applicable law that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's online identifier in the registry. The executed consent form shall be submitted with the registration form.

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."

SECTION 3. G.S. 14-208.8(a) reads as rewritten:

"(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),~~(6), and (7), 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."

SECTION 4. The catch line for G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of online identifier; change of academic status or educational employment status.**"

SECTION 5. G.S. 14-208.9 is amended by adding a new subsection to read:

"(e) A person required to register shall not use any online identifier to communicate over the Internet that is not included in the registration information provided pursuant to G.S. 14-208.7. If a person required to register changes or obtains a new online identifier, the person shall report in person to the sheriff in the county where the person is registered to provide the online identifier information to the sheriff before using the online identifier. The person shall also execute a consent form consistent with applicable law that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's changed or new online identifier in the registry."

SECTION 6. G.S. 14-208.9A is amended by adding a new subdivision to read:

"(5) If the person has an online identifier, the person shall update the person's consent form or execute a new consent form that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's changed or new online identifier in the registry as necessary."

SECTION 7. G.S. 14-208.11(a) is amended by adding a new subdivision to read:

"(10) Fails to provide an online identifier that the person uses or intends to use as required by this Article."

SECTION 8. G.S. 14-208.14(a) is amended by adding a new subdivision to read:

"(5) To maintain a system allowing an entity to compare the database of registered users of that entity to the list of online identifiers of persons in the central sex offender registry in accordance with this Article."

SECTION 9. Part 2 of Article 27A is amended by adding a new section to read:

"**§ 14-208.15A. Release of online identifiers to entity; fee.**

(a) The Division may release registry information regarding a registered offender's online identifier to an entity for the purpose of allowing the entity

prescreening users or for comparison with information held by the entity as provided by this section.

(b) An entity desiring to prescreen its users or compare its database of registered users to the list of online identifiers of persons in the statewide registry may apply to the Division to access the information. An entity that complies with the criteria developed by the Division regarding the release and use of the online identifier information and pays the fee established by the Division in accordance with this section may screen new users or compare its database of registered users to the list of online identifiers of persons in the statewide registry as frequently as the Division may allow for the purpose of identifying a registered user associated with an online identifier contained in the statewide registry.

(c) The Division may charge an entity that submits a request to access and review the database of online identifiers of persons in the statewide registry a fee of one hundred dollars ($100.00). The fee shall be included with the request to access the database. The fee may be charged for each request to access the database. Fees collected under this section shall be credited to the Department of Justice and applied to the cost of providing this service.

(d) The Division shall develop criteria and adopt rules regarding the release and use of online identifier information. The criteria shall include a requirement that the information obtained from the statewide registry shall not be disclosed for any purpose other than for prescreening its users or comparing the database of registered users of the entity against the list of online identifiers of persons in the statewide registry to protect children from online sexual predators and shall also require that the entity notify the Division when a comparison of the online identifier information and the entity users indicates that a registered offender's online identifier is being used on the entity's system.

(e) Any entity complying with this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred as a result of the compliance."

SECTION 10. Part 2 of Article 27A of Chapter 14 of the General Statutes is amended by adding the following new section to read:

"**§ 14-208.18. Forfeiture of licensing privileges for failure to register on the sex offender and public protection registry.**

(a) As used in this section, the term:

(1) 'Licensing board' means a department, division, agency, officer, board, or other unit of State government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.

(2) 'Licensing privilege' means the privilege of a person to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.

(3) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows a person to engage in an occupation or profession.

(b) Upon a finding by the sentencing judge that a person who has a reportable conviction or is a recidivist has failed to register with the statewide sex offender and public protection registry, and upon findings as to any specific licensing privileges held by the person, the court may revoke some or all of the privileges until the person has registered with the registry. Upon an order revoking the privileges of a person who has failed to register, the clerk of superior court shall notify the appropriate licensing board that the person has failed to register and that the person's licensing privileges are revoked until the licensing board receives proof of certification by the clerk that the person has registered.

(c) A person may file a request with the clerk of superior court for certification that the person has registered with the statewide registry. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with the registration requirement may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the registry requirement. The clerk shall provide a form to be used for a request for certification. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with registering on the statewide registry has complied with or is no longer subject to the registry requirement, then the clerk shall certify that the person has met the requirements of or is no longer subject to the requirements and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the person may petition the district court for a reinstatement of the person's privileges. The court may order the privileges reinstated conditioned upon compliance with this Article. The court may order the privileges reinstated if the person has complied with or is no longer subject to the registry requirement. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with this Article, the clerk of superior court shall certify that the person has complied with or is no longer subject to the requirements of this Article and provide a copy of the certification to the person. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) A person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) of this section to each licensing agency to which the person applies for reinstatement of licensing privileges. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that a person's licensing privileges are revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to

a person shall remain in full force and effect until the board receives certification under this section that the person has complied with the requirements of this Article. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with this Article shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section."

SECTION 11. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-13.1. Revocation when licensing privilege forfeited for failure to register on the sex offender and public protection registry.**

(a) Upon receipt of a court order, pursuant to G.S. 14-208.18, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records, report the action within 30 days to the Department of Justice, Division of Criminal Information, and follow the normal post-revocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Division of Criminal Information that the licensee has complied with the registry requirements under Part 2 of Article 27A of Chapter 14 of the General Statutes or is no longer subject to the registry requirements that were the basis for the revocation.

(b) If at the time the court revokes a license pursuant to subsection (a) of this section the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 14-208.18, then the revocation period imposed by the occupational licensing board applies.

(c) Immediately upon certification by the clerk of superior court that the licensee whose license was revoked pursuant to subsection (a) of this section because of failure to comply with the registry requirement is in compliance with or no longer subject to the registry requirement, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

SECTION 12. By December 1, 2007, the Administrative Office of the Courts, in consultation with the North Carolina Department of Justice, North Carolina Department of Correction, and the North Carolina Sheriffs' Association shall develop a procedure to ensure timely notification to the Division of Criminal Information, Department of Justice, and to sheriffs regarding any person subject to registration under Article 27A of Chapter 14 of the General Statutes who does not receive an active term of imprisonment, as specified in G.S. 14-208.7(a).

SECTION 13.(a) Funds are authorized to be allocated to the Governor's Crime Commission for award as grants to eligible sheriffs' offices to assist with the enforcement of the State's sex offender laws: The grants shall be awarded specifically to enhance and support law efforts by sheriffs to do the following: (i) process and conduct in-person sex offender registrations, (ii) monitor compliance of sex offenders as required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct

activities to investigate and apprehend persons who commit reportable offenses as defined under Article 27A of Chapter 14 of the General Statutes. The grants shall be awarded on a matching basis of one State dollar ($1.00) for every one non-State dollar ($1.00).

SECTION 13.(b) The Commission shall establish the criteria regarding the eligibility and amount of the awards for the grants described in this section. The grant criteria shall include consideration of all of the following:

(1) The number of convicted sex offenders in the county of the applicant.

(2) The level of community support for the grant award.

(3) Whether the application identifies a problem that is consistent with the purposes of this initiative.

(4) The development and maintenance by the applicant with other public safety agencies to regularly exchange information and intelligence.

(5) Whether the application articulates clearly the jurisdiction's goals, outcomes, and objectives and describes the accountability system and performance measures to determine progress towards achieving them.

SECTION 13.(c) Any grants allocated shall not revert to the General Fund but shall remain with the Commission for the purposes described in this section.

SECTION 13.(d) The grant funds described by this section shall supplement, and not supplant, existing funds and services provided for the tracking of registered sex offenders. The grants shall be subject to established fiscal controls, annual reporting, and accountability requirements specified by the Commission.

SECTION 13.(e) This section is effective only if funds are appropriated to implement it. Nothing in this section shall obligate or require the State to appropriate funds for the purposes set forth in the section.

SECTION 14. Section 12 of this act is effective when it becomes law. Section 13 of this act becomes effective July 1, 2007. The remainder of this act becomes effective December 1, 2007, and applies to persons who are on the sex offender registry as of that date, and any person required by law to be on the sex offender registry on or after that date.

SENATE BILL 869:
Sex Offender/Register E-Mail Address.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 1, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell
Version:	PCS to First Edition S869-CSRK		Committee Co-Counsel

SUMMARY: ***This act would require persons required to register on the State sex offender registry to include any identifier the person uses or intends to use for the purpose of communicating on the Internet. The identifying information would be available to entities that provide Internet services for the purpose of allowing the entity to prescreen users, or for comparison with the registry for the purpose of protecting minors. The act also provides for the forfeiture of licensing privileges for a person who fails to properly register on the sex offender registry, and adds offenses which will require registration. The act applies to persons who are on the sex offender registry on or after December 1, 2007.***

[As introduced, this bill was identical to H764, as introduced by Reps. Goforth, Ray, which is currently in House Judiciary II.]

BILL ANALYSIS:

Section 1: Adds definitions to the sex offender registry statutes, including: electronic mail, entity, instant message, internet, and on-line identifier. Also adds two new offenses under the definition of "sexually violent offense:"

- G.S. 14-318.4(a1) – Parent or caretaker commit or permit act of prostitution with or by a juvenile.
- G.S. 14-318.4(a2) - Commission or allowing of sexual act upon a juvenile by parent or guardian.

Section 2: Requires that forms used by sheriffs to register sex offenders include any online identifier that the person either uses, or intends to use. The registrant would also be required to execute a consent form that allows entities (as defined by the act) to provide information to the sheriff and Division of Criminal Information (DCI) necessary to determine accuracy of registry information.

Section 3: Amends the statute that requires a confinement facility to collect information for the registry from prisoners who are pending release (more than 10 days, but less than 30 days from release date).

Section 4: Amends catch line of statute.

Section 5: Prohibits a person required to register from using any online identifier that is not included in their registration. Also requires that the person report in person to the sheriff to register any changes, and to execute the necessary consent form authorizing entities to release information.

Section 6: Amends the statute requiring semiannual verification to provide for an updated or new consent form authorizing an entity to provide information to the Sheriff and the DCI.

Section 7: Amends penalty statute to provide that a person who willfully fails to provide an online identifier is guilty of a Class F felony.

Section 8: Requires the DCI to maintain a system that allows entities to compare the database of registered users of the entity to the line of online identifiers of persons in the sex offender registry.

Section 9: Requires the DCI to develop criteria and adopt rules for allowing entities, for a fee of one hundred dollars ($100), to review the database of online identifiers. The authorized purposes include the prescreening of users or comparing the database of registered users of the entity against the online identifiers of persons in the registry to protect children from online sexual predators. The rules shall also require that the entity notify the DCI when a comparison indicates that a registered offender's online identifier is being used on the entity's system.

Section 10: Authorizes a judge who finds that a person has failed to comply with the sex offender registry laws to revoke some or all of the person's licensing privileges until the person has registered. The statute provides for notifications to the licensing agencies; requests for certification based on meeting the registry requirements or that the person is no longer subject to registration, to be filed with the clerk of court; and petitions to the district court for reinstatement.

The boards are to take action on revocations upon receipt of notice, and the actions of the board are not subject to the Administrative Procedures Act. A revocation under the procedure in the statute is to remain in place until such time as the board receives the required notice from the clerk of court.

Section 11: Provides for revocation of an occupational license upon receipt of a court order. The revocation is to remain in place until notification of compliance with the State registry laws. Revocations resulting from the board's own disciplinary action are not superseded by the provisions of the statute.

Section 12: Requires the Administrative Office of the Courts, in consultation with the N.C. Department of Justice, N.C. Department of Correction, and the North Carolina Sheriff's Association, to develop by December 1, 2007, a timely procedure to notify DCI when a person subject to the registration laws does not received an active term of imprisonment.

Section 13.(a) – Section 13.(e) Authorizes funds to the Department of Crime Control and Public Safety, to be allocated to the Governor's Crime Commission to award grants to sheriffs' offices. The funds are to be used for assisting in the registration and monitoring requirements of the sex offender registry statutes, and the investigation and apprehension of persons who commit reportable offenses. The funds would be available on a matching grant basis, dollar for dollar.

The funds would not revert to the General Fund, and shall not supplant any existing funds provided for tracking registered sex offenders.

EFFECTIVE DATE: Section 12 is effective when it becomes law. Section 13 becomes effective July 1, 2007. The remainder of the act is effective December 1, 2007, and applies to persons who are on the sex offender registry as of that date, and to any person required by law to be on the registry on or after that date.

S0869e1-SMRK-CSRK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1482

Short Title:	Municipal ETJ Street Standards.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW SUBDIVISION STREETS THAT ARE CONSTRUCTED WITHIN THE EXTRATERRITORIAL JURISDICTION OF A MUNICIPALITY AND THAT ARE OFFERED FOR PUBLIC DEDICATION TO BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARDS OF THE MUNICIPALITY RATHER THAN THE STANDARDS OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-102.6 reads as rewritten:

"**§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation <u>or a municipality</u> required of developers.**

(a) The owner of a tract or parcel of land which is subdivided from and after October 1, 1975, into two or more lots, building sites, or other divisions for sale or building development for residential purposes, where such subdivision includes a new street or the changing of an existing street, shall record a map or plat of the subdivision with the register of deeds of the county in which the land is located. The map or plat shall be recorded prior to any conveyance of a portion of said land, by reference to said map or plat.

(b) The right-of-way of any new street or change in an existing street shall be delineated upon the map or plat with particularity and such streets shall be designated to be either public or private. Any street designated on the plat or map as public shall be conclusively presumed to be an offer of dedication to the public of such street.

(c) The right-of-way and design of streets designated as public shall be in accordance with the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system. <u>Alternatively, if the streets are located within the extraterritorial planning jurisdiction of a municipality that has adopted subdivision regulations containing the provisions specified in subsection (d1) of this section and such streets are not intended for maintenance by the Department of Transportation, then such streets may be in accordance with the</u>

minimum right-of-way and construction standards of that municipality rather than the standards established by the Board of Transportation. If a municipal or county subdivision control ordinance is in effect in the area proposed for subdivision, the map or plat required by this section shall not be recorded by the register of deeds until after it has received final plat approval by the municipality or county, and until after it has received a certificate of approval by the Division of Highways as herein provided as to those streets regulated in subsection (g). The certificate of approval may be issued by a district engineer of the Division of Highways of the Department of Transportation.

(d) The right-of-way and construction plans for such public streets that are intended for maintenance by the Department of Transportation in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of the streets on the subdivision plat or map. Final acceptance by the Division of Highways of the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation.

(d1) The right-of-way and construction plans for proposed public streets that are located within the extraterritorial planning jurisdiction of a municipality need not be submitted to the Division of Highways if: (i) such streets are not intended for maintenance by the Department of Transportation, (ii) the subdivision regulations of that municipality authorize streets within the municipality's extraterritorial planning jurisdiction to be constructed in accordance with that municipality's standards rather than the standards of the Department of Transportation, (iii) the subdivision regulations of that municipality require that such streets be properly maintained by the developer or a property owners association pending annexation and acceptance of such streets by the municipality, and (iv) the developer complies with such subdivision regulations and submits to the municipality all required documentation to ensure that such streets will be so constructed and maintained until such streets are accepted by the municipality.

(e) No person or firm shall place or erect any utility in, over, or upon the existing or proposed right-of-way of any street intended for acceptance by the Department of Transportation in a subdivision to which this section applies, except in accordance with the Division of Highway's policies and procedures for accommodating utilities on highway rights-of-way, until the Division of Highways has given written approval of the location of such utilities. Written approval may be in the form of exchange of correspondence until such times as it is requested to add the street or streets to the State system, at which time an encroachment agreement furnished by the Division of

Highways must be executed between the owner of the utility and the Division of Highways. The right of any utility placed or located on a proposed or existing subdivision public street right-of-way shall be subordinate to the street right-of-way, and the utility shall be subject to regulation by the Department of Transportation. Utilities are defined as electric power, telephone, television, telegraph, water, sewage, gas, oil, petroleum products, steam, chemicals, drainage, irrigation, and similar lines. Any utility installed in a subdivision street not in accordance with the Division of Highways accommodation policy, and without prior approval by the Division of Highways, shall be removed or relocated at no expense to the Division of Highways.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify ~~that~~ either that: (i) the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway ~~system.~~ system, or (ii) the street has not been approved by and will not be accepted for maintenance by the Division of Highways, but has been approved by the municipality with regulatory authority over that subdivision and has been or will be constructed by the developer or seller in accordance with the standards for subdivision streets adopted by that municipality for acceptance onto such municipality's street system. In this latter case, the disclosure statement shall also inform the buyer that the municipality cannot and will not accept the street until it comes within the corporate limits of the municipality through annexation and shall also disclose the arrangements that have been made to ensure the maintenance of the street pending acceptance by the municipality. If the street is designated by the developer and seller as a private street, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

(g) The provisions of this section shall apply to all subdivisions located outside municipal corporate limits. As to subdivisions inside municipalities, this section shall apply to all proposed streets or changes in existing streets on the State highway system as shown on the comprehensive plan for the future development of the street system made pursuant to G.S. 136-66.2, and in effect at the date of approval of the map or plat.

(h) The provisions of this section shall not apply to any subdivision that consists only of lots located on Lakes Hickory, Norman, Mountain Island and Wylie which are lakes formed by the Catawba River which lots are leased upon October 1, 1975. No roads in any such subdivision shall be added to the State maintained road system without first having been brought up to standards established by the Board of Transportation for inclusion of roads in the system, without expense to the State. Prior to entering any agreement or any conveyance with any prospective buyer of a lot in any such subdivision, the seller shall prepare and sign, and the buyer shall receive and sign an acknowledgment of receipt of a statement fully and completely disclosing the status of and the responsibility for construction and maintenance of the road upon which such lot is located.

(i) The purpose of this section is to insure that new subdivision streets described herein to be dedicated to the public will either comply with the State standards for placing subdivision streets on the State highway system for maintenance, or with municipal standards for acceptance by that municipality, and that full and accurate disclosure of the responsibility for construction and maintenance of private streets be made. This section shall be construed and applied in a manner which shall not inhibit the ability of public utilities to satisfy service requirements of subdivisions to which this section applies.

(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a transportation corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article.

(k) A willful violation of any of the provisions of this section shall be a Class 1 misdemeanor."

SECTION 2. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1482
PROPOSED COMMITTEE SUBSTITUTE S1482-CSST-41 [v.2]

4/30/2007 6:58:40 PM

Short Title: Municipal ETJ Street Standards. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM THE REQUIREMENTS OF G.S. 163-102.6 SUBDIVISIONS LOCATED WITHIN THE EXTRATERRITORIAL PLANNING JURISDICTION OF MUNICIPALITIES HAVING A POPULATION OF AT LEAST 500,000, IN AND TO THE EXTENT THAT SUCH SUBDIVISIONS CONTAIN STREETS THAT HAVE BEEN APPROVED BY ANY SUCH MUNICIPALITY AS MEETING THE PUBLIC STREET STANDARDS OF SUCH MUNICIPALITY PRIOR TO THE EFFECTIVE DATE OF THIS ACT, AND TO EXEMPT SUCH SUBDIVISIONS FROM ANY ORDINANCE REQUIREMENT THAT SUCH PUBLIC STREETS MEET THE STANDARDS OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 136-102.6(c), (d), and (i), with respect to a subdivision plat for land located within the extraterritorial planning jurisdiction of any municipality having a population of at least 500,000, if said plat includes one or more streets approved for construction by the municipality as meeting the public street standards of the municipality prior to June 1, 2007, and said plat has not received a certificate of approval from the Division of Highways:

(1) The right-of-way and design of any street designated as public on said plat and approved for construction by the municipality prior to June 1, 2007, need not be in accordance with the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system.

(2) Said subdivision plat shall be recorded by the register of deeds without a certificate of approval by the Division of Highways if the final plat has been approved by the municipality.

(3) If and to the extent that any street designated as public on said plat meets the applicable public street standards of such municipality, said

street shall be exempt from any ordinance requirement that the street also meet the standards of the North Carolina Department of Transportation, and may be given final plat approval by the municipality.

SECTION 2. To the extent that any plats are recorded pursuant to this act, the disclosure statement required by G.S. 136-102.6(f) shall fully and completely disclose that any street designated as public on said plats has not been approved by and will not be accepted for maintenance by the Division of Highways and shall inform the buyer that the municipality cannot and will not accept the street until it comes within the corporate limits of the municipality through annexation, and shall also disclose the arrangements that have been made to ensure the maintenance of the street prior to acceptance by the municipality.

SECTION 3. This act is effective when it becomes law.

SENATE BILL 1482:
Municipal ETJ Street Standards

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	April 30, 2007
Introduced by:	Sen. Clodfelter	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S1482-CSST-41		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 1482 would:

1. *Authorize municipalities with a population of at least 500,000 to give final plat approval to certain described plats that do not comply with G.S. 136-102.6.*
2. *Require a disclosure statement on those final plats stating any streets designated as public on that plat:*
   a. *Have not been approved by the Department of Transportation.*
   b. *Will not be accepted by the municipality granting final plat approval until the area is annexed into the municipality.*
   c. *Disclose the arrangements made to ensure maintenance of the street prior to acceptance by the municipality.*

CURRENT LAW: Developers of subdivisions located outside the municipal limits of any municipality that include a new street or the changing of an existing street must record a map or plat of the subdivision in the county in which the land is located. For those new streets or changes in streets that are to be public streets, the right-of-way and design of those streets are to be in accordance with the minimum right-of-way and construction standards established by the NC Board of Transportation. The plans for the new public streets are to be submitted to the Division of Highways for review and approval. The Register of Deeds is not to record a plat unless it has been approved by the Division of Highways, and given final approval by the county or city w ith a subdivision ordinance in place. However, the approval by the Division of Highways is not the acceptance into the State highway system. G.S. 136-102.6. A county or city could not grant final approval to a subdivision that did not meet the statutory requirements.

BILL ANALYSIS:

The pcs would exempt certain subdivision plats from the requirements of G.S. 136-102.6 regarding minimum construction standards for streets and highways accepted by the DOT and the requirement of any local ordinance that streets meet the DOT construction standards, thereby allowing the subdivision plat to be approved as final. The certain subdivision plats are those meeting the following criteria:

- The land is located outside the municipal limits but within the ETJ of a municipality with a population of at least 500,000.
- The subdivision has at least one street that the municipality with a population of at least 500,000 approved for construction as meeting the municipality's public street standards prior to June 1, 2007
- The subdivision plat has not received a certificate of approval from the NC Division of Highways.

For the certain subdivision plats approved as final under these provisions, a disclosure statement regarding the streets designated as public on the plat must be on the recorded plat. The disclosure statement must include all of the following:

1. A statement the streets designated as public have not been approved by the Department of Transportation.
2. A statement the streets designated as public will not be accepted by the municipality granting final plat approval until the area is annexed into the municipality.
3. A disclosure of the arrangements made to ensure maintenance of the street prior to acceptance by the municipality.

EFFECTIVE DATE: Effective when it becomes law.

S1482e1-SMST-CSST-41

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1161

Short Title: Rely on Verbal Advice - No Tax Liability. (Public)

Sponsors: Senator Hoyle.

Referred to: Judiciary I (Civil).

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW TAXPAYERS TO RELY UPON VERBAL ADVICE FROM THE DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-264 reads as rewritten:

"**§ 105-264. Effect of Secretary's interpretation of revenue laws.**

(a) Interpretation. – It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. ~~An~~An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.

(b) Written Advice. – If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

(c) Verbal Advice. – If a taxpayer verbally requests specific advice from the Department and receives in response erroneous verbal advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information. In order to receive the protection afforded by this subsection, a taxpayer must sign an affidavit stating, with as much specificity as

practicable, the advice requested by the taxpayer and the related fact pattern, the content of advice received by the taxpayer, the date the advice was received, and the identity of the person furnishing the advice.

(d) Revised Interpretations. – This section does not prevent the Secretary from changing an interpretation and it does not prevent a change in an interpretation from applying on and after the effective date of the change."

SECTION 2. This act becomes effective July 1, 2005, and applies to assessments issued on or after that date.

SENATE BILL 1161:
Rely on Verbal Advice - No Tax Liability

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Finance	**Date:**	April 30, 2007
Introduced by:	Sen. Hoyle	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 1161 would allow taxpayer to rely upon verbal advice from the Department of Revenue and not be liable for penalty or additional assessment by the Department to the extent that advice was reasonably relied upon by the taxpayer.

CURRENT LAW: In the collection of State income taxes, the Secretary of the Department of Revenue must notify a taxpayer in writing of the Secretary's intent to assess the taxpayer for taxes due of the taxpayer. The notice describe the basis for the proposed assessment and identify the amounts of any tax, interest, additions to tax, and penalties included in the assessment. Once the assessment is final, the Secretary must notify the taxpayer that the assessment is final, and therefore collectible. All assessments, exclusive of penalties assessed on the tax, bear interest between 5% and 16% per year. G.S. 105-241.1.

Penalties may also be assessed by the Secretary, and the penalty is collected as an additional tax. The clear proceeds of the penalty are remitted to the Civil Penalty and Forfeiture Fund. G.S. 105-236.

The Secretary is charged with interpreting all the laws administered by the Secretary, and the interpretation is prima facie correct. Taxpayers are entitled to rely upon the interpretation. When an interpretation is changed, a taxpayer who relied on the interpretation before the change is not liable for any penalty or additional assessment on any tax that accrued prior to the change in interpretation.

If a taxpayer makes a written request for advice to the Department of Revenue and receives erroneous advice in return, that taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice to the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

BILL ANALYSIS: The bill would provide that a taxpayer relying upon erroneous verbal advice by the Department would be treated as taxpayer relying on erroneous written advice by the Department. A taxpayer who sought the verbal advice of the Department of Revenue and received erroneous verbal advice is not liable for any penalty or additional assessment attributable to the erroneous advice to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

The taxpayer would be required to sign an affidavit stating all of the following:

1. The advice requested by the taxpayer.
2. The related fact pattern.
3. The content of the advice received by the taxpayer.
4. The date the advice was received.
5. The identity of the person furnishing the advice.

EFFECTIVE DATE: Effective July 1, 2005, and applies to assessment issued on or after that date.

S1161e1-SMST

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment 9**

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. _____ DATE May 1

S. B. No. 869 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 7, line 29

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

~~entities~~

"entity's ~~[illegible]~~ blocking a person's access to the entity's service where the person is not subject to registration under the sex offender registry laws, or for criminal actions against third persons by a person using the entity's system."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 1, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lu-Ann Dayman	DLC & Assoc
Kevin Leonard	WCSR
Sean Hogue	J&D Tree Pro's Inc.
Key Melton	N.C. D.O.R.
Hal Miller	NCAOCT
Selena Bevan	CFTF
Laura Parker	DAs Conference
Andy Sabol	NC DOR
Tim Holmes	DOR
Sam McEwen	NC DOR
Kim Hibbard	NCLM

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 1, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McHugh	GOV OFFICE
Alastair Macaulay	NCMBA
Tim KENT	NC Realtors
Lisa Martin	NC Home Builders
Colleen Kochanek	Smith Moore
Mike Carey	Cliff. NC Fund
Leon M Kellum	Nelson Mullins
John Allen	"
Andy Munn	REBIC
DANIEL BAUM	KENNEDY COVINGTON
JERRY RATLEY	NCDOJ/SBI

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 1, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wiliams	NCHBA
William Willets	NC DAQ
Mike Abraczinskas	NC DAQ
Elizabeth Self	DENR
Wendy Kelly	HMW
Will Pully	Office of Gov
Finn Cauly	Office of Lt. Gover
Kelly McCall	WNCN
Eric Burkhalter	WNCN

Senate Judiciary I Committee
May 3, 2007
Minutes

The Senate Judiciary I Committee met at 10:00 a.m. on Thursday, May 3, 2007 in Room 1027 of the Legislative Building. A quorum was present.

In Senator Nesbitt's absence, Senator Clodfelter called the meeting to order.

Senator Clodfelter told the committee that **SB 691/SB 223, and HB 343** (*Charlotte-Mecklenburg Police Jurisdiction*) were on the agenda. All were introduced by the Charlotte Delegation and that all had been identical. **SB 691/SB 223** were discussed in a previous meeting, but because **HB 343** has crossed over from the House, he said that under the protocol, it will be taken up at this meeting. He recognized the bill sponsor, Representative Martha Alexander, to make comments on the bill.

Because its identical bill, **SB 223**, had been explained to the members at a previous meeting, Rep. Alexander explained the changes in 2nd Edition of **HB 343.** She said that the 2nd Edition removes the reference to the Charlotte-Mecklenburg Police Department and provides that law enforcement officers of the counties include all officers of consolidated county-city law enforcement agencies.

Senator Tillman moved to give **HB 343** a favorable report, and his motion carried.

SB 223 and **SB 691** were displaced.

A proposed Committee Substitute for **SB 30** (*DV Victims/Add Protections)* was before the committee and Senator Graham moved that it be adopted for consideration. His motion carried.

Senator Boseman was recognized to comment on the changes in the committee substitute bill. She said the bill was previously heard in this Committee and that members had concerns about Section 1. The following issues were raised:

- The bill allowed, as evidence, a letter from a "domestic violence program," which the Committee believed was vague. The PCS requires that the program be a recipient from the Domestic Violence Center Fund. There is an agency that qualifies in every county.

- The bill allowed the applicant to provide, as evidence, "documentation from a religious, medical, or other professional...." Because of committee concerns that this was non-specific, and could be abused, it was deleted.

- The committee was concerned that the bill didn't specify that the records were from the name change proceedings. The PCS includes specific language that the confidentiality provisions apply to "proceedings relating to the applicant's name change."

When Senator Boseman had concluded her remarks, Senator Tillman moved to the new Committee Substitute for **SB 30** a favorable report, unfavorable to the original bill. The motion carried.

A new proposed Committee Substitute for **SB 869** (*Sex Offender/Register E-Mail Address)* was next before the committee. Senator Cowell moved for its adoption and her motion carried.

Senator Clodfelter recognized Senator Boseman to speak on the bill. She deferred to Committee Counsel, Hall Pell, for explanation of the committee substitute.

He noted the following changes to the Committee Substitute that was adopted at the committee's meeting on May 1, 2007. These involved an amendment proposed by Sen. Rand to clarify the civil and criminal immunity for an entity providing Internet services. There is immunity if entity refuses to provide services on basis that person believed to be a registered sex offender and it turns out he wasn't, and also, immunity if a person is a registered sex offender and, subject to the laws, does in fact register his on-line identifier and then commits a criminal or tortuous act against a minor. These changes are on Page 7, lines 27 – 38.

Senator Brunstetter questioned how the second part works. For instance, if a sex offender registers for internet services and the entity does not block that person, and there is a crime committed, the entity is immune from liability.

For clarification, Senator Clodfelter told the committee that the concept is that the entity doesn't have to police the registry. It is not obligated to police it and will not be liable if it don't police it. The obligation is on the sex offender, the law enforcement agency, and the courts. He said this is the same concept as the "Good Samaritan" law.

Discussion followed about immunity from liability. Senator Clodfelter recognized Theresa Kostrzewa for comment on the bill.

She said she represents News Corporation which owns "MySpace" Under current law, Internet providers aren't required to do anything. With this legislation, she said, News Corporation is willing to give law enforcement a "tool" to address this problem, but they do not want to be liable if for some reason this doesn't work.

Senator Berger had concerns about language in the bill regarding immunity, and he offered an amendment to insert the word "reasonably" after the word "entity" on page 7, line 30. The amendment was adopted.

Will Polk, General Counsel to Lt. Governor Beverly Purdue was recognized for comment. He said the way the system will operate is that before immunity commences, service providers will have to go to the Division of Criminal Information to get the list of sex offenders to put in their databases. If an individual's name is on the list, the individual will be blocked. Even if the blocked individual's information is incorrect and he is not a sex offender, the provider will have acted in good faith and will be immune from liability.

Senator Stevens moved to roll the amendment into a new committee substitute, to give that bill a favorable report, unfavorable as to original bill. The motion carried.

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

Copies of Senate Bill 691, Senate Bill 223, House Bill 343, Bill Analysis for HB 343, Senate Bill 30, proposed committee substitute for SB 30, Bill Analysis for the SB 30 pcs, Senate Bill 869, proposed Committee substitute for SB 869, Bill Analysis for the SB 869 psc, and an Amendment to SB 869 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, respectively.

Respectively Submitted,

Senator Daniel Clodfelter
Vice Chair

Janette Whaley Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 223

Short Title:	Charlotte-Mecklenburg Police Jurisdiction.	(Public)
Sponsors:	Senators Goodall; Clodfelter, Dannelly, Graham, and Pittenger.	
Referred to:	Judiciary 1 (Civil).	

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT OFFICERS OF THE CHARLOTTE-MECKLENBURG POLICE DEPARTMENT MAY ARREST PERSONS ANYWHERE IN THE STATE FOR OFFENSES COMMITTED WITHIN THE DEPARTMENT'S TERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-402(e) reads as rewritten:

"(e) County Officers, Outside Territory, for Felonies. – Law-enforcement officers of counties may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territory described in subsection (b). Law enforcement officers of the Charlotte-Mecklenburg Police Department may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territorial jurisdiction of the Charlotte-Mecklenburg Police Department."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 691*

Short Title:	Charlotte-Mecklenburg Police Jurisdiction.	(Public)
Sponsors:	Senators Clodfelter; Dannelly and Graham.	
Referred to:	Judiciary 1 (Civil).	

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT OFFICERS OF THE CHARLOTTE-MECKLENBURG POLICE DEPARTMENT MAY ARREST PERSONS ANYWHERE IN THE STATE FOR OFFENSES COMMITTED WITHIN THE DEPARTMENT'S TERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-402(e) reads as rewritten:

"(e) County Officers, Outside Territory, for Felonies. – Law-enforcement officers of counties may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territory described in subsection (b). Law enforcement officers of the Charlotte-Mecklenburg Police Department may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territorial jurisdiction of the Charlotte-Mecklenburg Police Department."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H **2**

HOUSE BILL 343
Committee Substitute Favorable 3/21/07

Short Title: Charlotte-Mecklenburg Police Jurisdiction. (Public)

Sponsors:

Referred to:

February 26, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT LAW ENFORCEMENT OFFICERS OF COUNTIES SHALL INCLUDE OFFICERS OF CONSOLIDATED COUNTY-CITY LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-402(e) reads as rewritten:

"(e) County Officers, Outside Territory, for Felonies. – Law-enforcement officers of counties may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territory described in subsection (b). For purposes of this subsection, law enforcement officers of counties shall include all officers of consolidated county-city law enforcement agencies."

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

HOUSE BILL 343:
Charlotte-Mecklenburg Police Jurisdiction

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 2, 2007
Introduced by:	Reps. Alexander, Earle	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 343 defines county officers to include consolidated county-city law enforcement officers for purposes the ability to arrest persons anywhere in the State for felonies committed within the county officer's jurisdiction.

[As introduced, this bill was identical to S223, as introduced by Sen. Goodall, which is currently in Senate Judiciary I (Civil).]

[As introduced, this bill was identical to S691, as introduced by Sen. Clodfelter, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: G.S. 15A-402 sets out the jurisdiction of officers to make arrests.

- Law enforcement officers of the State may arrest persons anywhere within the State.
- County and city officers may arrest persons within their particular cities and counties and on any property owned by the city or county outside its limits.
- City officers may also arrest persons within one mile of the city limits.
- County officers may arrest a person anywhere in the State for felonies committed within the county or on county owned property.
- Both city and county officers may arrest a person outside their territory when the offense was committed within their jurisdiction and they are in hot pursuit of the person.

BILL ANALYSIS: The bill provides that consolidated county-city law enforcement officers have the same authority as county officers to arrest persons anywhere in the State for felonies committed within the police department's jurisdiction. One such consolidated county-city law enforcement agency is the Charlotte-Mecklenburg Police Department.

EFFECTIVE DATE: This act is effective when it becomes law.

H0343e2-SMST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 30*

Short Title: DV Victims/Add Protections. (Public)

Sponsors: Senators Boseman; Atwater, Cowell, Goodall, and Snow.

Referred to: Judiciary 1 (Civil).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS TO PROVIDE GREATER PROTECTION FOR DOMESTIC VIOLENCE VICTIMS AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 101-2 reads as rewritten:

"**§ 101-2. Procedure for changing name; petition; notice.**

(a) A person who wishes, for good cause shown, to change his or her name must file an application before the clerk of the superior court of the county in which the person lives, after giving 10 days' notice of the application by publication at the courthouse ~~door.~~door; provided that publication is not required if the applicant provides evidence that the applicant is a victim of domestic violence, sexual offense, or stalking. This evidence may include any of the following:

(1) Law enforcement, court, or other federal or state agency records or files.

(2) Documentation from a domestic violence program if the applicant is alleged to be a victim of domestic violence.

(3) Documentation from a religious, medical, or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

(b) An application to change the name of a minor child may be filed by the child's parent or parents, guardian, or guardian ad litem, and this application may be joined in the application for a change of name filed by the parent or parents. Nothing in this section shall be construed to permit one parent to make an application on behalf of a minor child without the consent of the other parent if both parents are living; except that a minor who has reached the age of 16 years, upon proper application to the clerk, may change his or her name with the consent of the parent who has custody of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the

minor. A change of parentage or the addition of information relating to parentage on the birth certificate of any person is governed by G.S. 130A-118.

The consent of a parent who has abandoned a minor child is not required if a copy of an order of a court of competent jurisdiction adjudicating that parent's abandonment of the minor if filed with the clerk. If a court of competent jurisdiction has not declared the minor to be an abandoned child, the clerk, on 10 days' written notice by registered or certified mail, directed to the last known address of the parent alleged to have abandoned the child, may determine whether the parent has abandoned the child. If the parent denies that the parent abandoned the child, this issue of fact shall be transferred and determined as provided in G.S. 1-301.2. If abandonment is determined, the consent of the parent is not required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

SECTION 2. G.S. 15A-830(a)(7) reads as rewritten:

"(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; 14-43.6; 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.

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.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 3. G.S. 50B-3(c1) reads as rewritten:

"(c1) When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that includes:

(1) Domestic violence agencies and services.

(2) Sexual assault agencies and services.

(3) Victims' compensation services.

(4) Legal aid services.

(5) Address confidentiality services.

The sheet shall also ~~explains~~ explain the plaintiff's right to apply for a permit under G.S. 14-415.15."

SECTION 4. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 30*
PROPOSED COMMITTEE SUBSTITUTE S30-PCS65242-RK-2

Short Title: DV Victims/Add Protections. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS TO PROVIDE GREATER PROTECTION FOR DOMESTIC VIOLENCE VICTIMS AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 101-2 reads as rewritten:

"**§ 101-2. Procedure for changing name; petition; notice.**

(a) A person who wishes, for good cause shown, to change his or her name must file an application before the clerk of the superior court of the county in which the person lives, after giving 10 days' notice of the application by publication at the courthouse door.

(b) The publication in subsection (a) of this section is not required if the applicant:

(1) Is a participant in the address confidentiality program under Chapter 15C of the General Statutes; or

(2) Provides evidence that the applicant is a victim of domestic violence, sexual offense, or stalking. This evidence may include any of the following:

a. Law enforcement, court, or other federal or state agency records or files.

b. Documentation from a program receiving funds from the Domestic Violence Center Fund, if the applicant is alleged to be a victim of domestic violence.

(c) The application and the court's entire record of the proceedings relating to the applicant's name change is not a matter of public record where the applicant has complied with subsection (b)(1) or (b)(2) of this section. Records qualifying under this subsection shall be maintained separately from other records, shall be withheld from

public inspection, and may be examined only by order of the court or with the written consent of the applicant.

(d) An application to change the name of a minor child may be filed by the child's parent or parents, guardian, or guardian ad litem, and this application may be joined in the application for a change of name filed by the parent or parents. Nothing in this section shall be construed to permit one parent to make an application on behalf of a minor child without the consent of the other parent if both parents are living; except that a minor who has reached the age of 16 years, upon proper application to the clerk, may change his or her name with the consent of the parent who has custody of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. A change of parentage or the addition of information relating to parentage on the birth certificate of any person is governed by G.S. 130A-118.

The consent of a parent who has abandoned a minor child is not required if a copy of an order of a court of competent jurisdiction adjudicating that parent's abandonment of the minor if filed with the clerk. If a court of competent jurisdiction has not declared the minor to be an abandoned child, the clerk, on 10 days' written notice by registered or certified mail, directed to the last known address of the parent alleged to have abandoned the child, may determine whether the parent has abandoned the child. If the parent denies that the parent abandoned the child, this issue of fact shall be transferred and determined as provided in G.S. 1-301.2. If abandonment is determined, the consent of the parent is not required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

SECTION 2. G.S. 15A-830(a)(7) reads as rewritten:

"(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; 14-43.6; 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.

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.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 3. G.S. 50B-3(c1) reads as rewritten:

"(c1) When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that includes:

(1) Domestic violence agencies and services.

(2) Sexual assault agencies and services.

(3) Victims' compensation services.

(4) Legal aid services.

(5) Address confidentiality services.

The sheet shall also ~~explains~~ explain the plaintiff's right to apply for a permit under G.S. 14-415.15."

SECTION 4. This act becomes effective October 1, 2007.

SENATE BILL 30:
DV Victims/Add Protections

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 1, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell
Version:	PCS to First Edition S30-CSRK		Committee Co-Counsel

SUMMARY: This act would keep name change records of domestic violence victims from the public records; include as victims under the Crime Victims' Rights Act any person who has had a domestic violence protective order, if the order was violated by the respondent; and makes mandatory a current practice of the clerks of court to provide domestic violence victims with information. The act becomes effective October 1, 2007.

[As introduced, this bill was identical to H45, as introduced by Reps. McLawhorn, Ross, Farmer-Butterfield, Parmon, which is currently in House Judiciary I.]

BACKGROUND:

During discussion of the bill in the Joint Legislative Committee on Domestic Violence, the committee noted that while it was recommending the bill, it would need some additional language to insure that the actual court records were not available to the public. The bill only related to the public disclosure at the court house door.

This bill was previously heard in this Committee. There were no expressed concerns about Sections 2 and 3 of the bill. However, during the discussion of Section 1, the following issues were raised:

- The bill allowed, as evidence, a letter from a "domestic violence program," which the Committee believed was vague. The PCS requires that the program be a recipient of funds from the Domestic Violence Center Fund. There is an agency that qualifies in every county.
- The bill allowed the applicant to provide, as evidence, "documentation from a religious, medical, or other professional . . . ." Because of committee concerns that this was non-specific, and could be abused, it was deleted.
- The committee was concerned that the bill didn't specify that the records were from the name change proceedings. The PCS includes specific language that the confidentiality provisions apply to "proceedings relating to the applicant's name change."

BILL ANALYSIS:

Section 1: The act would exempt the publication of an application for a name change if the applicant meets the qualifications listed in Section 1 of the bill. The proposed committee substitute adds subsection (b) to the bill. This subsection provides that the court's entire record is not a matter of public record, and is only accessible upon court order, or with the written consent of the applicant.

Section 2: The Crime Victims' Rights Act provides that law enforcement agencies, the district attorney's office, and the court have certain obligations to victims, including: notification of availability of services; explanation of the agency's role in prosecuting offenses; notification to the victim of proceedings; and insuring that victim identification information is forwarded to the district attorney.

This section would include as a victim any person who had a domestic violence protective order, and there is probable cause to believe that a person has violated the order.

Section 3: The clerks of court are currently providing an information sheet to applicants when a domestic violence protective order is issued. (attached) The Joint Legislative Committee on Domestic Violence recommended that the practice be made mandatory, and that the Attorney General's address confidentiality program be included. The section would make the current practice a statutory requirement, with the addition of the address confidentiality program as an additional service.

EFFECTIVE DATE: The act is effective October 1, 2007.

S0030e1-SMRK-CSRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 869*

Short Title:	Sex Offender/Register E-Mail Address.-AB	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary I (Civil).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD FELONY CHILD ABUSE TO THE LIST OF SEX OFFENDER REGISTRY OFFENSES WHEN THE OFFENSE INVOLVES PROSTITUTION OF A JUVENILE OR THE COMMISSION OF A SEXUAL ACT UPON A JUVENILE, TO REQUIRE THAT A SEX OFFENDER REGISTER HIS OR HER ELECTRONIC MAIL ADDRESS OR OTHER ONLINE IDENTIFIER IN THE STATEWIDE SEX OFFENDER REGISTRY, TO ALLOW LIMITED RELEASE OF ONLINE IDENTIFIER INFORMATION IN THE SEX OFFENDER REGISTRY TO CERTAIN ENTITIES THAT PROVIDE ELECTRONIC MAIL SERVICES AND OTHER INTERNET SERVICES FOR THE PURPOSE OF SCREENING ONLINE USERS, TO PROVIDE THAT THE COURT MAY ORDER A CONVICTED SEX OFFENDER WHO FAILS TO REGISTER AS A SEX OFFENDER TO FORFEIT CERTAIN LICENSING PRIVILEGES, TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP PROCEDURES TO ENSURE TIMELY NOTIFICATION OF THE DIVISION OF CRIMINAL STATISTICS AND SHERIFFS OF PERSONS REQUIRED TO REGISTER WHO ARE NOT SENTENCED TO ACTIVE TIME, AND TO APPROPRIATE FUNDS FOR THE GOVERNOR'S CRIME COMMISSION TO USE TO AWARD AS MATCHING GRANTS TO ELIGIBLE SHERIFFS' OFFICES TO ENHANCE AND SUPPORT THEIR EFFORTS TO ENFORCE THE STATE'S SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "Aggravated offense" means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving

vaginal, anal, or oral penetration with a victim who is less than 12 years old.

(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) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

~~(1d)~~(1e) "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.

(1f) "Entity" means a business or organization that provides Internet service, electronic communications service, remote computing service, online service, electronic mail service or electronic instant message or chat services whether the business or organization is within or without the State.

(1g) "Instant Message or IM" means a form of real-time communication between two or more people based on typed text. The text is conveyed via computers connected over a network such as the Internet.

~~(1e)~~(1h) "Institution of higher education" means any postsecondary public or private educational institution, including any trade or professional institution, college, or university.

(1i) "Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

(1j) "Internet Protocol Address" means an IP address (Internet Protocol Address) and is a unique address that devices use in order to identify and communicate with each other on a computer network utilizing the Internet Protocol standard (IP).

~~(1f)~~(1k) "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)~~(1l) "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)~~(1m) "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)~~(1n) "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.

(1o) "Online identifier" includes all of the following: electronic mail address and instant message, chat or other Internet communication name or identity information and IP address.

(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, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.

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. 14-27.5A (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. 14-43.13 (subjecting or maintaining a person for sexual servitude), 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).~~act), G.S. 14-318.4(a1)(parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). 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."

SECTION 2. G.S. 14-208.7(b) reads as rewritten:

"(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~~student;

(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.~~employed; and

(7) Any online identifier that the person uses or intends to use. The registration form shall also require that the person execute a consent form consistent with applicable law that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's online identifier in the registry. The executed consent form shall be submitted with the registration form.

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."

SECTION 3. G.S. 14-208.8(a) reads as rewritten:

"(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),~~(6), and (7), 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."

SECTION 4. The catch line for G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of online identifier; change of academic status or educational employment status.**"

SECTION 5. G.S. 14-208.9 is amended by adding a new subsection to read:

"(e) A person required to register shall not use any online identifier to communicate over the Internet that is not included in the registration information provided pursuant to G.S. 14-208.7. If a person required to register changes or obtains a new online identifier, the person shall report in person to the sheriff in the county where the person is registered to provide the online identifier information to the sheriff before using the online identifier. The person shall also execute a consent form consistent with applicable law that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's changed or new online identifier in the registry."

SECTION 6. G.S. 14-208.9A is amended by adding a new subdivision to read:

"(5) If the person has an online identifier, the person shall update the person's consent form or execute a new consent form that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's changed or new online identifier in the registry as necessary."

SECTION 7. G.S. 14-208.11(a) is amended by adding a new subdivision to read:

"(10) Fails to provide an online identifier that the person uses or intends to use as required by this Article."

SECTION 8. G.S. 14-208.14(a) is amended by adding a new subdivision to read:

"(5) To maintain a system allowing an entity to compare the database of registered users of that entity to the list of online identifiers of persons in the central sex offender registry in accordance with this Article."

SECTION 9. Part 2 of Article 27A is amended by adding a new section to read:

"**§ 14-208.15A. Release of online identifiers to entity; fee.**

(a) The Division may release registry information regarding a registered offender's online identifier to an entity for the purpose of allowing the entity prescreening users or for comparison with information held by the entity as provided by this section.

(b) An entity desiring to prescreen its users or compare its database of registered users to the list of online identifiers of persons in the statewide registry may apply to the Division to access the information. An entity that complies with the criteria developed by the Division regarding the release and use of the online identifier information and pays the fee established by the Division in accordance with this section may screen new users or compare its database of registered users to the list of online identifiers of persons in the statewide registry as frequently as the Division may allow for the purpose of identifying a registered user associated with an online identifier contained in the statewide registry.

(c) The Division may charge an entity that submits a request to access and review the database of online identifiers of persons in the statewide registry a fee of one hundred dollars ($100.00). The fee shall be included with the request to access the database. The fee may be charged for each request to access the database. Fees collected under this section shall be credited to the Department of Justice and applied to the cost of providing this service.

(d) The Division shall develop criteria and adopt rules regarding the release and use of online identifier information. The criteria shall include a requirement that the information obtained from the statewide registry shall not be disclosed for any purpose other than for prescreening its users or comparing the database of registered users of the entity against the list of online identifiers of persons in the statewide registry to protect children from online sexual predators and shall also require that the entity notify the Division when a comparison of the online identifier information and the entity users indicates that a registered offender's online identifier is being used on the entity's system."

SECTION 10. Part 2 of Article 27A of Chapter 14 of the General Statutes is amended by adding the following new section to read:

"**§ 14-208.18. Forfeiture of licensing privileges for failure to register on the sex offender and public protection registry.**

(a) As used in this section, the term:

(1) 'Licensing board' means a department, division, agency, officer, board, or other unit of State government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.

(2) 'Licensing privilege' means the privilege of a person to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.

(3) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows a person to engage in an occupation or profession.

(b) Upon a finding by the sentencing judge that a person who has a reportable conviction or is a recidivist has failed to register with the statewide sex offender and public protection registry, and upon findings as to any specific licensing privileges held by the person, the court may revoke some or all of the privileges until the person has registered with the registry. Upon an order revoking the privileges of a person who has failed to register, the clerk of superior court shall notify the appropriate licensing board that the person has failed to register and that the person's licensing privileges are revoked until the licensing board receives proof of certification by the clerk that the person has registered.

(c) A person may file a request with the clerk of superior court for certification that the person has registered with the statewide registry. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with the registration requirement may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the registry requirement. The clerk shall provide a form to be used for a request for certification. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with registering on the statewide registry has complied with or is no longer subject to the registry requirement, then the clerk shall certify that the person has met the requirements of or is no longer subject to the requirements and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the person may petition the district court for a reinstatement of the person's privileges. The court may order the privileges reinstated conditioned upon compliance with this Article. The court may order the privileges reinstated if the person has complied with or is no longer subject to the registry requirement. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with this Article, the clerk of superior court shall certify that the person has complied with or is no longer subject to the requirements of this Article and provide a copy of the certification to the person. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) A person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) of this section to each licensing agency to which the person applies for reinstatement of licensing privileges. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that a person's licensing privileges are revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to

a person shall remain in full force and effect until the board receives certification under this section that the person has complied with the requirements of this Article. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with this Article shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section."

SECTION 11. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-13.1. Revocation when licensing privilege forfeited for failure to register on the sex offender and public protection registry.**

(a) Upon receipt of a court order, pursuant to G.S. 14-208.18, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records, report the action within 30 days to the Department of Justice, Division of Criminal Statistics, and follow the normal post-revocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Division of Criminal Statistics that the licensee has complied with the registry requirements under Part 2 of Article 27A of Chapter 14 of the General Statutes or is no longer subject to the registry requirements that were the basis for the revocation.

(b) If at the time the court revokes a license pursuant to subsection (a) of this section the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 14-208.18, then the revocation period imposed by the occupational licensing board applies.

(c) Immediately upon certification by the clerk of superior court that the licensee whose license was revoked pursuant to subsection (a) of this section because of failure to comply with the registry requirement is in compliance with or no longer subject to the registry requirement, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

SECTION 12. By December 1, 2007, the Administrative Office of the Courts, in consultation with the North Carolina Department of Justice, North Carolina Department of Correction, and the North Carolina Sheriffs' Association shall develop a procedure to ensure timely notification to the Division of Criminal Statistics, Department of Justice, and to sheriffs regarding any person subject to registration under Article 27A of Chapter 14 of the General Statutes who does not receive an active term of imprisonment, as specified in G.S. 14-208.7(a).

SECTION 13.(a) There is appropriated from the General Fund to the Department of Crime Control and Public Safety the sum of five hundred thousand dollars ($500,000) for fiscal year 2007-2008 to be allocated to the Governor's Crime Commission to award as grants to eligible sheriffs' offices to assist with the enforcement of the State's sex offender laws: The grants shall be awarded specifically to enhance and support law efforts by sheriffs to do the following: (i) process and conduct

in-person sex offender registrations, (ii) monitor compliance of sex offenders as required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct activities to investigate and apprehend persons who commit reportable offenses as defined under Article 27A of Chapter 14 of the General Statutes. The grants shall be awarded on a matching basis of one State dollar ($1.00) for every one non-State dollar ($1.00).

SECTION 13.(b) The Commission shall establish the criteria regarding the eligibility and amount of the awards for the grants established pursuant to this section. The grant criteria shall include consideration of all of the following:

(1) The number of convicted sex offenders in the county of the applicant.

(2) The level of community support for the grant award.

(3) Whether the application identifies a problem that is consistent with the purposes of this initiative.

(4) The development and maintenance by the applicant with other public safety agencies to regularly exchange information and intelligence.

(5) Whether the application articulates clearly the jurisdiction's goals, outcomes, and objectives and describes the accountability system and performance measures to determine progress towards achieving them.

SECTION 13.(c) Funds appropriated by this section shall not revert to the General Fund but shall remain with the Commission for the purposes described in this section.

SECTION 13.(d) The funds appropriated by this section shall supplement, and not supplant, existing funds and services provided for the tracking of registered sex offenders. The funds appropriated by this section shall be subject to established fiscal controls, annual reporting, and accountability requirements specified by the Commission.

SECTION 14. Section 12 of this act is effective when it becomes law. Section 13 of this act becomes effective July 1, 2007. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 869*
PROPOSED COMMITTEE SUBSTITUTE S869-CSRK-11 [v.6]

5/1/2007 3:42:09 PM

Short Title: Sex Offender/Register E-Mail Address.-AB (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD FELONY CHILD ABUSE TO THE LIST OF SEX OFFENDER REGISTRY OFFENSES WHEN THE OFFENSE INVOLVES PROSTITUTION OF A JUVENILE OR THE COMMISSION OF A SEXUAL ACT UPON A JUVENILE, TO REQUIRE THAT A SEX OFFENDER REGISTER HIS OR HER ELECTRONIC MAIL ADDRESS OR OTHER ONLINE IDENTIFIER IN THE STATEWIDE SEX OFFENDER REGISTRY, TO ALLOW LIMITED RELEASE OF ONLINE IDENTIFIER INFORMATION IN THE SEX OFFENDER REGISTRY TO CERTAIN ENTITIES THAT PROVIDE ELECTRONIC MAIL SERVICES AND OTHER INTERNET SERVICES FOR THE PURPOSE OF SCREENING ONLINE USERS, TO PROVIDE THAT THE COURT MAY ORDER A CONVICTED SEX OFFENDER WHO FAILS TO REGISTER AS A SEX OFFENDER TO FORFEIT CERTAIN LICENSING PRIVILEGES, TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP PROCEDURES TO ENSURE TIMELY NOTIFICATION OF THE DIVISION OF CRIMINAL INFORMATION AND SHERIFFS OF PERSONS REQUIRED TO REGISTER WHO ARE NOT SENTENCED TO ACTIVE TIME, AND TO APPROPRIATE FUNDS FOR THE GOVERNOR'S CRIME COMMISSION TO USE TO AWARD AS MATCHING GRANTS TO ELIGIBLE SHERIFFS' OFFICES TO ENHANCE AND SUPPORT THEIR EFFORTS TO ENFORCE THE STATE'S SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "Aggravated offense" means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or

the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

(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 Information of the Department of Justice.

(1d) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

~~(1d)~~(1e) "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.

(1f) "Entity" means a business or organization that provides Internet service, electronic communications service, remote computing service, online service, electronic mail service or electronic instant message or chat services whether the business or organization is within or outside the State.

(1g) "Instant Message or IM" means a form of real-time text communication between two or more people. The communication is conveyed via computers connected over a network such as the Internet.

~~(1e)~~(1h) "Institution of higher education" means any postsecondary public or private educational institution, including any trade or professional institution, college, or university.

(1i) "Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

~~(1f)~~(1j) "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)~~(1k) "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)~~(1l) "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)~~(1m) "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.

(1n) "Online identifier" includes all of the following: electronic mail address and instant message screen name, user ID, chat or other Internet communication name or identity information.

(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, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.

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. 14-27.5A (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. 14-43.13 (subjecting or maintaining a person for sexual servitude), 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).~~act), G.S. 14-318.4(a1)(parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). 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."

SECTION 2. G.S. 14-208.7(b) reads as rewritten:

"(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~~student;

(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.~~employed; and

(7) Any online identifier that the person uses or intends to use. The registration form shall also require that the person execute a consent form consistent with applicable law that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's online identifier in the registry. The executed consent form shall be submitted with the registration form.

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."

SECTION 3. G.S. 14-208.8(a) reads as rewritten:

"(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),~~(6), and (7), 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."

SECTION 4. The catch line for G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of online identifier; change of academic status or educational employment status.**"

SECTION 5. G.S. 14-208.9 is amended by adding a new subsection to read:

"(e) A person required to register shall not use any online identifier to communicate over the Internet that is not included in the registration information provided pursuant to G.S. 14-208.7. If a person required to register changes or obtains a new online identifier, the person shall report in person to the sheriff in the county where the person is registered to provide the online identifier information to the sheriff before using the online identifier. The person shall also execute a consent form consistent with applicable law that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's changed or new online identifier in the registry."

SECTION 6. G.S. 14-208.9A is amended by adding a new subdivision to read:

"(5) If the person has an online identifier, the person shall update the person's consent form or execute a new consent form that authorizes an entity to provide to the sheriff and Division any information pertaining to that person necessary to determine the veracity of the person's changed or new online identifier in the registry as necessary."

SECTION 7. G.S. 14-208.11(a) is amended by adding a new subdivision to read:

"(10) Fails to provide an online identifier that the person uses or intends to use as required by this Article."

SECTION 8. G.S. 14-208.14(a) is amended by adding a new subdivision to read:

"(5) To maintain a system allowing an entity to compare the database of registered users of that entity to the list of online identifiers of persons in the central sex offender registry in accordance with this Article."

SECTION 9. Part 2 of Article 27A is amended by adding a new section to read:

"**§ 14-208.15A. Release of online identifiers to entity; fee.**

(a) The Division may release registry information regarding a registered offender's online identifier to an entity for the purpose of allowing the entity

prescreening users or for comparison with information held by the entity as provided by this section.

(b) An entity desiring to prescreen its users or compare its database of registered users to the list of online identifiers of persons in the statewide registry may apply to the Division to access the information. An entity that complies with the criteria developed by the Division regarding the release and use of the online identifier information and pays the fee established by the Division in accordance with this section may screen new users or compare its database of registered users to the list of online identifiers of persons in the statewide registry as frequently as the Division may allow for the purpose of identifying a registered user associated with an online identifier contained in the statewide registry.

(c) The Division may charge an entity that submits a request to access and review the database of online identifiers of persons in the statewide registry a fee of one hundred dollars ($100.00). The fee shall be included with the request to access the database. The fee may be charged for each request to access the database. Fees collected under this section shall be credited to the Department of Justice and applied to the cost of providing this service.

(d) The Division shall develop criteria and adopt rules regarding the release and use of online identifier information. The criteria shall include a requirement that the information obtained from the statewide registry shall not be disclosed for any purpose other than for prescreening its users or comparing the database of registered users of the entity against the list of online identifiers of persons in the statewide registry to protect children from online sexual predators and shall also require that the entity notify the Division when a comparison of the online identifier information and the entity users indicates that a registered offender's online identifier is being used on the entity's system.

(e) Any entity complying with this section in good faith shall be immune from any civil or criminal liability resulting from:

(1) the entity's refusal to provide system service to a person on the basis that the entity believed that the person was subject to registration under State sex offender registry laws, or

(2) a person's criminal or tortious acts when the person is subject to the State sex offender registry laws, and the person:

a. complied with the requirement to register their online identifier, and

b. committed the criminal or tortious acts against a minor with whom they had communicated on the entity's sytem by using their registered online identifier."

SECTION 10. Part 2 of Article 27A of Chapter 14 of the General Statutes is amended by adding the following new section to read:

"**§ 14-208.18. Forfeiture of licensing privileges for failure to register on the sex offender and public protection registry.**

(a) As used in this section, the term:

(1) 'Licensing board' means a department, division, agency, officer, board, or other unit of State government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.

(2) 'Licensing privilege' means the privilege of a person to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.

(3) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows a person to engage in an occupation or profession.

(b) Upon a finding by the sentencing judge that a person who has a reportable conviction or is a recidivist has failed to register with the statewide sex offender and public protection registry, and upon findings as to any specific licensing privileges held by the person, the court may revoke some or all of the privileges until the person has registered with the registry. Upon an order revoking the privileges of a person who has failed to register, the clerk of superior court shall notify the appropriate licensing board that the person has failed to register and that the person's licensing privileges are revoked until the licensing board receives proof of certification by the clerk that the person has registered.

(c) A person may file a request with the clerk of superior court for certification that the person has registered with the statewide registry. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with the registration requirement may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the registry requirement. The clerk shall provide a form to be used for a request for certification. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with registering on the statewide registry has complied with or is no longer subject to the registry requirement, then the clerk shall certify that the person has met the requirements of or is no longer subject to the requirements and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the person may petition the district court for a reinstatement of the person's privileges. The court may order the privileges reinstated conditioned upon compliance with this Article. The court may order the privileges reinstated if the person has complied with or is no longer subject to the registry requirement. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with this Article, the clerk of superior court shall certify that the person has complied with or is no longer subject to the requirements of this Article and provide a copy of the certification to the person. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) A person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) of this section

to each licensing agency to which the person applies for reinstatement of licensing privileges. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that a person's licensing privileges are revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to a person shall remain in full force and effect until the board receives certification under this section that the person has complied with the requirements of this Article. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with this Article shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section."

SECTION 11. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-13.1. Revocation when licensing privilege forfeited for failure to register on the sex offender and public protection registry.**

(a) Upon receipt of a court order, pursuant to G.S. 14-208.18, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records, report the action within 30 days to the Department of Justice, Division of Criminal Information, and follow the normal post-revocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Division of Criminal Information that the licensee has complied with the registry requirements under Part 2 of Article 27A of Chapter 14 of the General Statutes or is no longer subject to the registry requirements that were the basis for the revocation.

(b) If at the time the court revokes a license pursuant to subsection (a) of this section the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 14-208.18, then the revocation period imposed by the occupational licensing board applies.

(c) Immediately upon certification by the clerk of superior court that the licensee whose license was revoked pursuant to subsection (a) of this section because of failure to comply with the registry requirement is in compliance with or no longer subject to the registry requirement, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

SECTION 12. By December 1, 2007, the Administrative Office of the Courts, in consultation with the North Carolina Department of Justice, North Carolina Department of Correction, and the North Carolina Sheriffs' Association shall develop a

procedure to ensure timely notification to the Division of Criminal Information, Department of Justice, and to sheriffs regarding any person subject to registration under Article 27A of Chapter 14 of the General Statutes who does not receive an active term of imprisonment, as specified in G.S. 14-208.7(a).

SECTION 13.(a) Funds are authorized to be allocated to the Governor's Crime Commission for award as grants to eligible sheriffs' offices to assist with the enforcement of the State's sex offender laws: The grants shall be awarded specifically to enhance and support law efforts by sheriffs to do the following: (i) process and conduct in-person sex offender registrations, (ii) monitor compliance of sex offenders as required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct activities to investigate and apprehend persons who commit reportable offenses as defined under Article 27A of Chapter 14 of the General Statutes. The grants shall be awarded on a matching basis of one State dollar ($1.00) for every one non-State dollar ($1.00).

SECTION 13.(b) The Commission shall establish the criteria regarding the eligibility and amount of the awards for the grants described in this section. The grant criteria shall include consideration of all of the following:

(1) The number of convicted sex offenders in the county of the applicant.
(2) The level of community support for the grant award.
(3) Whether the application identifies a problem that is consistent with the purposes of this initiative.
(4) The development and maintenance by the applicant with other public safety agencies to regularly exchange information and intelligence.
(5) Whether the application articulates clearly the jurisdiction's goals, outcomes, and objectives and describes the accountability system and performance measures to determine progress towards achieving them.

SECTION 13.(c) Any grants allocated shall not revert to the General Fund but shall remain with the Commission for the purposes described in this section.

SECTION 13.(d) The grant funds described by this section shall supplement, and not supplant, existing funds and services provided for the tracking of registered sex offenders. The grants shall be subject to established fiscal controls, annual reporting, and accountability requirements specified by the Commission.

SECTION 13.(e) This section is effective only if funds are appropriated to implement it. Nothing in this section shall obligate or require the State to appropriate funds for the purposes set forth in the section.

SECTION 14. Section 12 of this act is effective when it becomes law. Section 13 of this act becomes effective July 1, 2007. The remainder of this act becomes effective December 1, 2007, and applies to persons who are on the sex offender registry as of that date, and any person required by law to be on the sex offender registry on or after that date.

5/3/07

SENATE BILL 869:
Sex Offender/Register E-Mail Address.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 3, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell
Version:	PCS to First Edition S869-CSRK		Committee Co-Counsel

SUMMARY: ***This act would require persons required to register on the State sex offender registry to include any identifier the person uses or intends to use for the purpose of communicating on the Internet. The identifying information would be available to entities that provide Internet services for the purpose of allowing the entity to prescreen users, or for comparison with the registry for the purpose of protecting minors. The act also provides for the forfeiture of licensing privileges for a person who fails to properly register on the sex offender registry, and adds offenses which will require registration. The act applies to persons who are on the sex offender registry on or after December 1, 2007.***

[As introduced, this bill was identical to H764, as introduced by Reps. Goforth, Ray, which is currently in House Judiciary II .]

BILL ANALYSIS:

Section 1: Adds definitions to the sex offender registry statutes, including: electronic mail, entity, instant message, internet, and on-line identifier. Also adds two new offenses under the definition of "sexually violent offense:"

- G.S. 14-318.4(a1) – Parent or caretaker commit or permit act of prostitution with or by a juvenile.
- G.S. 14-318.4(a2) - Commission or allowing of sexual act upon a juvenile by parent or guardian.

Section 2: Requires that forms used by sheriffs to register sex offenders include any online identifier that the person either uses, or intends to use. The registrant would also be required to execute a consent form that allows entities (as defined by the act) to provide information to the sheriff and Division of Criminal Information (DCI) necessary to determine accuracy of registry information.

Section 3: Amends the statute that requires a confinement facility to collect information for the registry from prisoners who are pending release (more than 10 days, but less than 30 days from release date).

Section 4: Amends catch line of statute.

Section 5: Prohibits a person required to register from using any online identifier that is not included in their registration. Also requires that the person report in person to the sheriff to register any changes, and to execute the necessary consent form authorizing entities to release information.

Section 6: Amends the statute requiring semiannual verification to provide for an updated or new consent form authorizing an entity to provide information to the Sheriff and the DCI.

Section 7: Amends penalty statute to provide that a person who willfully fails to provide an online identifier is guilty of a Class F felony.

Section 8: Requires the DCI to maintain a system that allows entities to compare the database of registered users of the entity to the line of online identifiers of persons in the sex offender registry.

Section 9: Requires the DCI to develop criteria and adopt rules for allowing entities, for a fee of one hundred dollars ($100), to review the database of online identifiers. The authorized purposes include the prescreening of users or comparing the database of registered users of the entity against the online identifiers of persons in the registry to protect children from online sexual predators. The rules shall also require that the entity notify the DCI when a comparison indicates that a registered offender's online identifier is being used on the entity's system.

Section 10: Authorizes a judge who finds that a person has failed to comply with the sex offender registry laws to revoke some or all of the person's licensing privileges until the person has registered. The statute provides for notifications to the licensing agencies; requests for certification based on meeting the registry requirements or that the person is no longer subject to registration, to be filed with the clerk of court; and petitions to the district court for reinstatement.

The boards are to take action on revocations upon receipt of notice, and the actions of the board are not subject to the Administrative Procedures Act. A revocation under the procedure in the statute is to remain in place until such time as the board receives the required notice from the clerk of court.

Section 11: Provides for revocation of an occupational license upon receipt of a court order. The revocation is to remain in place until notification of compliance with the State registry laws. Revocations resulting from the board's own disciplinary action are not superseded by the provisions of the statute.

Section 12: Requires the Administrative Office of the Courts, in consultation with the N.C. Department of Justice, N.C. Department of Correction, and the North Carolina Sheriff's Association, to develop by December 1, 2007, a timely procedure to notify DCI when a person subject to the registration laws does not received an active term of imprisonment.

Section 13.(a) – Section 13.(e) Authorizes funds to the Department of Crime Control and Public Safety, to be allocated to the Governor's Crime Commission to award grants to sheriffs' offices. The funds are to be used for assisting in the registration and monitoring requirements of the sex offender registry statutes, and the investigation and apprehension of persons who commit reportable offenses. The funds would be available on a matching grant basis, dollar for dollar.

The funds would not revert to the General Fund, and shall not supplant any existing funds provided for tracking registered sex offenders.

EFFECTIVE DATE: Section 12 is effective when it becomes law. Section 13 becomes effective July 1, 2007. The remainder of the act is effective December 1, 2007, and applies to persons who are on the sex offender registry as of that date, and to any person required by law to be on the registry on or after that date.

S0869e1-SMRK-CSRK

Attachment 11

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/3/07

S. B. No. 869 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Berger

1 moves to amend the bill on page 7, line 30
2 ( ) WHICH CHANGES THE TITLE
3 by inserting after the word "entity"
4 the word "reasonably".
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Renee Chou	WRAL-TV 2619 Western Blvd, Raleigh
Will Pugh	Office of Gov. Gov
Colleen Kochanek	Smith Moore
Ed Nicholson	Char Police
Boyd Cable	City of Charlotte
Daniel Baum	Kennedy Covington
D.L. Hunter	Char-Meck. Police Dept
John McKay	Gov Office
Angie Harris	Williams Mullen
Monica Johnson	NCAOC
Jay Gaither	District Atty. 25th

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Thursday, May 03, 2007

Senator ,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **343** Charlotte-Mecklenburg Police Jurisdiction.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Tuesday, May 08, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **30** DV Victims/Add Protections.

Draft Number:	PCS 65242
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **869** Sex Offender/Register E-Mail Address.-AB

Draft Number:	PCS 55447
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Thursday, May 3, 2007
10:00 a.m.
Room 1027

1. **Call Meeting to Order.**

2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 30	DV Victims/Add Protections.	Senator Boseman
SB 869	Sex Offender/Register E-Mail Address.-AB	Senator Boseman
SB 223	Charlotte-Mecklenburg Police Jurisdiction.	Senator Goodall
SB 691	Charlotte-Mecklenburg Police Jurisdiction.	Senator Clodfelter
HB 343	Charlotte-Mecklenburg Police Jurisdiction.	Representative Earle Representative Alexander

Adjournment.

SENATE JUDICIARY I COMMITTEE
(Civil)

May 8, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, May 8 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Sen. Charlie Albertson, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Malcolm Graham, Sen. David Hoyle, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Tony Rand, Sen. Richard Stevens, and Sen. Jerry Tillman.

Senate Nesbitt called the meeting to order and recognized Sen. John Snow to speak about Senate Bill 1290 (Alcohol Monitoring Systems for DWI Offenders). A Proposed Committee Substitute for SB 1290 was distributed to the members and was adopted unanimously.

Committee Staff, Hal Pell was recognized for an analysis of the proposed committee substitute.

Mr. Pell said this act would allow for the conditional restoration of a revoked license based upon an impaired driving offense, if a continuous alcohol monitoring device shows that the person has not consumed alcohol for the prescribed period and other conditions are met. The act would also authorize a judge to impose continuous alcohol monitoring as a condition of probation or parole and would become effective December 1, 2007. It applies to offenses committed on or after that date.

When Mr. Pell had completed his remarks, Mr. Bruce V. Roberts, President, Rehabilitation Support Services, was recognized for a power point presentation of "Continuous Alcohol Monitoring" (SCAM) in North Carolina. *(See Attachment 4.)*

When Mr. Roberts had completed his presentation, the Honorable Craig B. Brown, District Court Judge, NC District 14 (Durham County) spoke to endorse the SCAM. He said he had worked with this company for several years and he has full confidence in their ability to report accurate and timely information about alcohol related offenders. He said he personally uses the product in his court and he valued the date he receives from it.

Discussion followed and the bill was carried over.

Sen. Nesbitt recognized Sen. Tony Rand for an explanation of Senate Bill 1480 (Medical Release for Ill and Disabled Inmates). Sen. Rand moved that the committee adopt a Proposed Committee Substitute for SB 1480 and the motion carried.

Committee Staff, Kara McCraw, was recognized for a brief summary of the bill. She said SB 1480 would create a new article to provide for medical release of inmates who meet certain criteria, are either geriatric, permanently and totally disabled, or terminally ill, and who do not pose a public safety risk.

Sen. Rand told the committee that this legislation would save the state millions of dollars.

Discussion followed and the bill was carried.

The meeting adjourned at 10:50 a.m.

Copies of Senate Bill 1290, a Proposed Committee Substitute for SB 1290, a Bill Analysis for SB 1290, Rehabilitation Support Services (SCRAM) Power Point Presentation and other related materials, Senate Bill 1480, a Proposed Committee Substitute for SB 1480, and a Bill Analysis for the PCS for SB 1480 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, and 7 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1290

Short Title:	Alcohol Monitoring Systems for DWI Offenders.	(Public)
Sponsors:	Senators Snow and Berger of Franklin.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE USE OF ALCOHOL MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION, OR PAROLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 12 months under G.S. 20-17(a)(2) if he provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 12 months while being monitored by continuous alcohol monitoring devices.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, or a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) He is also not currently an excessive user of prescription drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

SECTION 2. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 18 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 18 months while being monitored by continuous alcohol monitoring devices.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) He is not currently an excessive user of prescription drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

SECTION 3. G.S. 20-179(e) reads as rewritten:

"(e) Mitigating Factors to Be Weighed. – The judge shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary

participation in the recommended treatment.

(6a) Completion of a mandated substance abuse assessment, compliance with its recommendations, and the maintaining of 60 days of continuous sobriety, as proven by a continuous alcohol monitoring system.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense."

SECTION 4. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation. The judge may impose any other lawful condition of probation, such as continuous alcohol monitoring."

SECTION 5. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation. The judge may impose any other lawful condition of probation, such as continuous alcohol monitoring."

SECTION 6. G.S. 15A-1374(b) is amended by adding a new subdivision to read:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted

written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(8b) Remain alcohol free and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation."

SECTION 7. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1290
PROPOSED COMMITTEE SUBSTITUTE S1290-CSRK-30 [v.2]

5/7/2007 4:14:36 PM

Short Title: Alcohol Monitoring Systems for DWI Offenders. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION, OR PAROLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 12 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 12 months while being monitored by continuous alcohol monitoring devices.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle

offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) He is not currently an excessive user of prescription drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

SECTION 2. G.S. 20-179(e) reads as rewritten:

"(e) Mitigating Factors to Be Weighed. – The judge shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(6a) Completion of a mandated substance abuse assessment, compliance with its recommendations, and simultaneously maintaining 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), ~~(6)~~ (6), (6a) and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense."

SECTION 3. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a

condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation. The judge may impose any other lawful condition of probation, such as continuous alcohol monitoring."

SECTION 4. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation. The judge may impose any other lawful condition of probation, such as continuous alcohol monitoring."

SECTION 5. G.S. 15A-1374(b) is amended by adding a new subdivision to read:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(8b) Remain alcohol free, and prove such abstinence through evaluation by a continuous alcohol monitoring system.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation."

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1290:
Alcohol Monitoring Systems for DWI Offenders

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 4, 2007
Introduced by:	Sen. Snow	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: ***This act would allow for the conditional restoration of a revoked license based upon a an impaired driving offense, if a continuous alcohol monitoring device shows that the person has not consumed alcohol for the prescribed period and other conditions are met. The act would also authorize a judge to impose continuous alcohol monitoring as a condition of probation or parole. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.***

[As introduced, this bill was identical to H1408, as introduced by Reps. Alexander, Barnhart, Walend, which is currently in House Judiciary I.]

CURRENT LAW: If a person has two or more impaired driving offenses, and the most recent offense is within 5 years immediately preceding the date of the offense for which the license is being revoked, then there is a permanent revocation of the license. The DMV may issue a conditional license after three years if there have been no other motor vehicle, drug, or criminal offense involving alcohol or drugs. The person must also not be a current excessive user of alcohol or drugs.

BILL ANALYSIS:

Section 1: Allows the DMV to issue a conditional license to a person who is subject to permanent revocation period after 12 months if:

- The driver has not consumed alcohol for 12 months while being monitored by continuous alcohol monitoring devices.
- Has met all of the current requirements for a conditional license (there have been no other motor vehicle, drug, or criminal offense involving alcohol or drugs, and not an excessive user of alcohol or drugs). The act amends the current law to include "prescription" drugs.

Section 2: Requires a sentencing judge in an impaired driving case to consider, as a mitigating factor, the completion of a mandated substance abuse assessment; compliance with the assessment recommendations; and the absence of alcohol in the driver's system for 60 days, as proven by a continuous alcohol monitoring system.

Sections 3 and 4: Allows a sentencing judge, as part of a Level One or Two Punishments in an impaired driving case, to impose continuous alcohol monitoring as a condition of probation. A judge must impose Level One punishment if there are two or more grossly aggravating factors. A Level Two punishment must be imposed if only one grossly aggravating factor applies.

Section 5: Allows the Post-Release Supervision and Parole Commission to require, as a condition of parole, that the parolee remain alcohol free, as proven by a continuous alcohol monitoring system.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

(over)

G.S. 20-179(c) . . .

. . .

The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:
   a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
   b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

   Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

. . .

May, 2006

REHABILITATION
SUPPORT SERVICES

SCRAM
References and Testimonials

SCRAM in now being regularly used in Charlotte, Raleigh, Durham, Gastonia and Chapel Hill, with occasional use in many other parts of North Carolina. What the statistics don't reflect are the successes being realized at the individual client level... for many, the bracelet is a wake up call with an opportunity to make positive life changes. Below are a collection of testimonials from our clients and from others within the NC Court Community.

SCRAM Client Testimonials

1. Edgecombe County Man - with a long history of alcohol abuse was ordered to wear SCRAM by Judge. After 30 days on bracelet client stated, "I can feel myself feeling a whole lot better. I am getting my self-confidence back, and I don't feel like I need to drink anymore."

2. Transylvania County Mother - "I had enjoyed 13 years of sobriety when several life changing events occurred. I navigated through each of them without a drink. It was after the fact that I chose to have a glass of wine. Within months I was drinking uncontrollably. I put the SCRAM bracelet on voluntarily because I wanted and needed the accountability to external supervision. I haven't had a drink since, and I am getting my life back in order."

3. Durham County SCRAM Client – "The positive nature of the SCRAM bracelet for me has been that I have had to publicly acknowledge my mistake and publicly show that I could have hurt myself or someone else. This moment-to-moment reminder that is locked to my leg reminds me every second of the day that every action has its consequences."

4. Person County Grandmother – "I don't like this bracelet and never will. But, I get to keep my grandkids. Person County says I have to wear it and I have for 39 days and have to for 21 more. I showed that I don't *need* a drink. I do like the effect of beer and I honestly can't say that I will never drink again. But for now I am sober and doing what I am told to do. At least the bracelet will help me to keep these kids away from their mom who is my daughter and uses crack."

5. Craven County Parent Email Request for Help – "Your program for drug rehabilitation has been highly recommended to us by a friend of a friend who has a son named ____ there. Our 23 year old son has just asked for help, and we are so grateful. He is to have an assessment on Monday. Could you please send any information to us regarding a waiting list, enrollment, duration, cost, etc.? We really want to seize this moment. Thank you so much!

6. Durham County Youth – "SCRAM has changed my life so much by being able to see how alcohol can affect your life. It has taught me a great responsibility in life in general. Such as don't drink and drive and you can also see how you act when you are intoxicated. Thank you for the opportunity to be on SCRAM. I have learned a lot thanks to you guys."

7. Mecklenburg County Auto Mechanic – "I've changed. It's better than staying inside in jail. For you to stay outside with your family, go to work; I'm going to try."

8. Orange County Carpenter -"My wife gladly paid the fees and after 30 days I got off the couch and was allowed to return to the bedroom. I feel physically better and my home life is much more stable. After work the urge to drink with my buddies was not a problem, I was being watched so why drink?"

May, 2006

SCRAM use in NC Social Services Cases

1. A fifty-nine year old Grandmother from Person County - has custody of daughter's children and wore the SCRAM bracelet for 63 days to prove abstinence from alcohol and keep her grandchildren with her. She was 100% compliant in all areas of the SCRAM Program and will retain custody of the grandchildren as their mother is in active addiction to crack-cocaine.

2. A Mother of 4 children from Union County-, who recently lost custody, asked Judge Bragg if she could enroll in the SCRAM program to prove ability to abstain from alcohol and have visitation privileges with her children. This was granted and she wore SCRAM from May 30 through July 27. She was 100% compliant in all areas of the SCRAM program and is attending aftercare every two weeks.

3. A young Mother from Stanly County - called RSS requesting to be enrolled in the SCRAM Program. In her desire to have her young child back at home with her, she stated, "I want to prove that I don't have an alcohol problem and wearing the bracelet seems like the easiest way." The bracelet will be installed on Monday, July 31 and she will wear it voluntarily for 2 months.

4. This 40+ year old Male from Orange County- has been residing at, and caring for his 97 year old grandfather. Close relatives have accused the grandson of negligence, theft, drinking excessively and using drugs in the home. The grandson's attorney is advising him to wear SCRAM and will propose to the judge that the data generated be used as evidence.

5. 30+ year old Mother from Person County - Due to drug and alcohol addiction/abuse this young woman recently lost custody of her children and is in jeopardy of becoming homeless herself. She is attending 12 Step Meetings, working hard to make radical changes in her life and is proactively seeking help. She will be enrolled in the SCRAM program which will be funded by her attorney, and also into a treatment program.

6. 40+year old Mother from Buncombe – admits that alcohol is her drug of choice and as a result is wearing SCRAM to eventually have her children returned home. By wearing the bracelet, she stated that she can forgo "the inconvenience of driving to town to take the breathalyzer test and then drive back to have visitation with my children."

May, 2006

SCRAM use in NC Domestic Violence Cases

1. Wilson County Former Marine – had bereavement detail while on active duty in Iraq. Returned home after Honorable Discharge. Started drinking excessively and became abusive to his wife. Ordered by Judge to the SCRAM Program for 30 days. Started therapy program. Completed the SCRAM Program with 100% compliance in all areas.

2. Chatham County Mortgage Broker – was making verbal threats to his wife. Volunteered to wear SCRAM for four months. Complete SCRAM program with 100% compliance and also sought counseling. Recognizes his addiction to alcohol, his irresponsible and threatening behavior when he drinks.

3. Wilson County Father and Husband – was court ordered to SCRAM Program for 120 days after becoming verbally/physically abusive to his wife and children. Began counseling. Finished SCRAM Program with 100% compliance in all areas.

4. Durham County Youth – admits that alcohol made him say and do stupid things. "I did not respect my mom like I should." Mother stated she was afraid of his anger and his size. Went to Wilmington Treatment Center and graduated.

May, 2006

NC District Court Judges

Hon. Joseph M. Buckner - Chief District Court Judge, NC District 15B (Orange and Chatham Counties)

"...a very useful tool for monitoring a persons ability to control their consumption. The DWI offender is no respecter of persons when it comes to maiming or killing unsuspecting victims. SCRAM gives me a tool to make sure I know what the offender is doing."

Hon. Craig B. Brown - District Court Judge, NC District 14 (Durham County)

" I have worked with Mr. Hewett and his company for quite some time and have full confidence in their ability to report accurate and timely information about alcohol related offenders. Public safety is a concern that looms large in my mind, SCRAM is the first instrument that offers a complete 24 look-back of behavior patterns of alcohol abuse. I personally use the product (in my courts) and value the data submitted to me."

Hon. Todd Owens – District Court Judge, NC District 26 (Mecklenburg Co.)

" The bottom line is this... the tool (SCRAM) is something that I can use to help people to help themselves, that I can use to help to make the community safer."

District Attorneys

Beverly Scarlett - Assistant District Attorney, District 15B (Orange, Chatham)

"I promote SCRAM use for any DWI offenses that show patterns of gross disregard for the law. Recently I phoned Mr. Hewett and requested he come to Hillsborough and immediately install SCRAM on a defendant with two DWI 's within a two week period. Public safety is my main concern. I also work in Drug Treatment Court and have compassion for the unfortunate souls with addiction and alcohol issues. With that being said, I took an oath to protect the public and I intend to so. Our office values SCRAM data and the service it offers to the

District Attorneys office. In our district the Chief District Judge Joe Buckner has ordered that all SCRAM data (for court ordered SCRAM monitoring) be reported to the DA and/or staff.

Jay Gaither – District Attorney, District 25 (Catawba, Caldwell, Burke)

"The SCRAM Program has proven to be successful in keeping repeat drunk driving offenders off the road, and I am in favor of its use in our county. This program puts probationers on a short lease at much less cost to the taxpayers. The device could also be a tool when defense attorneys offer plea proposals."

Defense Counsel

(All DWI Specialists)

Marcus E. Hill – Attorney in Durham, Orange and Chatham County Courts
Tel: 919-688-1941; fax 919-688-2426
Email: marcushill@mindspring.com; web: www.nc-dwi-defense.com

"I have used SCRAM in approximately 50 cases in the last year or so, and have found the data produced very useful in sentencing arguments, and have found the device helpful in persuading problem drinkers to abstain from alcohol. SCRAM is a valuable piece of a complete program that addresses the needs of society and of my clients, and lets healing begin."

Whitt Powell – Attorney (DMV and DWI specialist), Wake County Courts, et. al.
Tel: 919-971-8848; email: apowell653@nc.rr.com

"...this device will help to persuade DMV hearing officers to really take a hard look at my client's ability to stay away from alcohol. That's all they want...proof positive of no drinking. The other benefit of SCRAM came recently when I had a 30 year old female with multiple addictions and the second DWI on the docket. After wearing the bracelet for 60 days and volunteering for in-patient treatment, Mr. Hewett and I presented our guilty plea in front of a District Judge in Wake Co. We received the desired results and after leaving the courtroom the client's mother, with tears flowing, approach us and stated " thank you for giving me back my daughter". This is the reward that has no price tag.

May, 2006

Ralph Frasier - Attorney in Durham, Wake, Orange, Person Counties
Cell: 919-697-1174

"Many of my clients are professional and/or the breadwinner. Their livelihood is contingent on addressing the DWI issue ahead of them. I am always searching for creative ways to defend my clients, and SCRAM offers such an option. I use SCRAM to further convince DA's and Judges that they can rest assured that my client is sober and remorseful of their actions. Staying sober is a good thing when staring down the barrel of a Judge. $12 dollars is not too much for peace of mind and to assure that no more damage is done."

Randy Griffin - Attorney in Durham, Wake, Orange & Chatham County Courts.
Tel: 919-358-4871

" Ken (SCRAM) and I have worked together on several cases, all with much success. My experience with SCRAM has proved positive. When working a plea I like the added security of knowing that my client is honoring his commitment to stay out of trouble and work with Mr. Hewett on an almost daily basis. I want the best possible results for my clients in order to grow my referral business."

Michael Bradford - **A**ttorney in Durham, Orange and Chatham County Courts

"I carry a high volume of Hispanic clients. I am of Hispanic heritage and find a great need for legal counsel in the Spanish speaking community. The technology is simple and well received by Hispanic offenders. The cultural differences are easier bridged by showing my clients that accountability is what the courts are after. I am pleased that the vast majority of my SCRAM clients are successful in their attempt to remain sober. Our Drug Treatment Court has started to accept some DWI cases and I routinely start my applicants on SCRAM"

Lauren Dickerson - Attorney in Orange, Chatham and surrounding Districts.
Tel: 919-644-0021

" I am currently active in our Drug Treatment Court. We use SCRAM as a sanction tool for violations of our NO alcohol rule. I have found the device to be extremely effective in deterring further behavior along these lines. In my private practice I use SCRAM for peace of mind and promotion of sober living. I am sure that I am not alone in saying the period between being retained and adjudication can be stressful. I warn my clients that any further offenses can ruin the case that I have prepared for them. Our DA and Judges sincerely appreciate the SCRAM data to better know the actions my client has taken to address his/her alcohol issues."

Joanne Mack - Attorney in Durham, Orange and Chatham County Courts.
Tel: 919.680.6446
" I have used Mr. Hewett's (SCRAM) services numerous times throughout the past year plus. His liaison approach between client, attorney and treatment providers has proved invaluable. Several of the Judges I put my clients in front of require every possible action to show continuous sobriety prior to and after sentencing. I have seen with my own eyes drastic positive change in people with serious problems."

Donald Dickerson - Attorney in Orange, Chatham & surrounding counties
Tel: 919-644-0021
" Pre-trial and bond cases are my most recent use of SCRAM. Our DA's are much more likely to lower or negate high bonds when SCRAM is employed. The reports are extremely useful when adjudicating multiple offenders and high B.A.C. readings. "

DSS Case Managers

(Where SCRAM used in determining
Alcohol abuse by parents)

Michelle McCoy - DSS Officer in Person County,

"We have used SCRAM in two cases as of late. Both cases resulted in favorable outcomes for our clients. Great new technology for the future."

L.Powell - DSS Officer in Orange County.

"...after hearing about the SCRAM Program in criminal court it was ordered by Chief Judge Joe Buckner in a case involving a 34 year old male wishing to be reunited with his children. If he is successful in staying sober one of the largest obstacles in his way will be removed. I am excited to be the first in our DSS office to experiment with SCRAM."

Continuous Alcohol Monitoring ("CAM")

2007 North Carolina Legislation SB1290 and HB1408

SB1290 & HB1408 - Overview

Sponsors: Senators John Snow & Doug Berger
Representatives Martha Alexander, Jeff Barnhart, Trudi Walend and Bill Faison

Three primary elements:

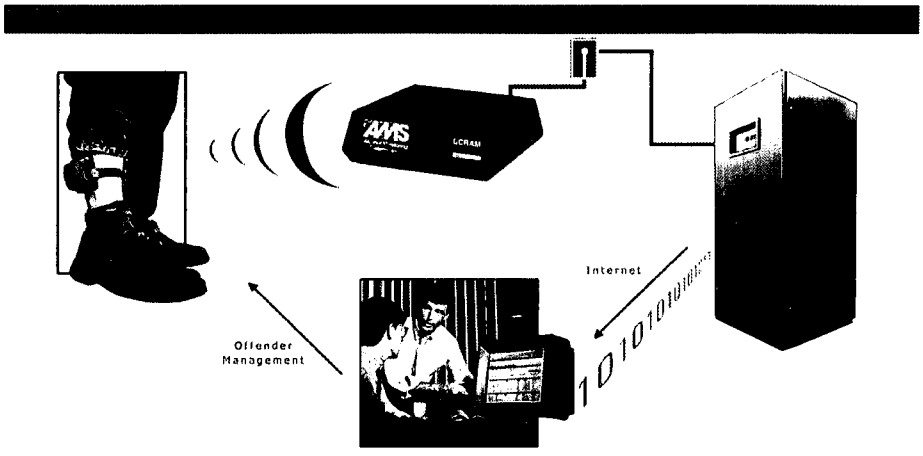
1. New, formally admissible, mitigating evidence created for DWI cases requiring the completion of both of 1) substance abuse assessment and recommendations, and, simultaneously, 2) 60 days of continual abstinence, as proven by CAM.

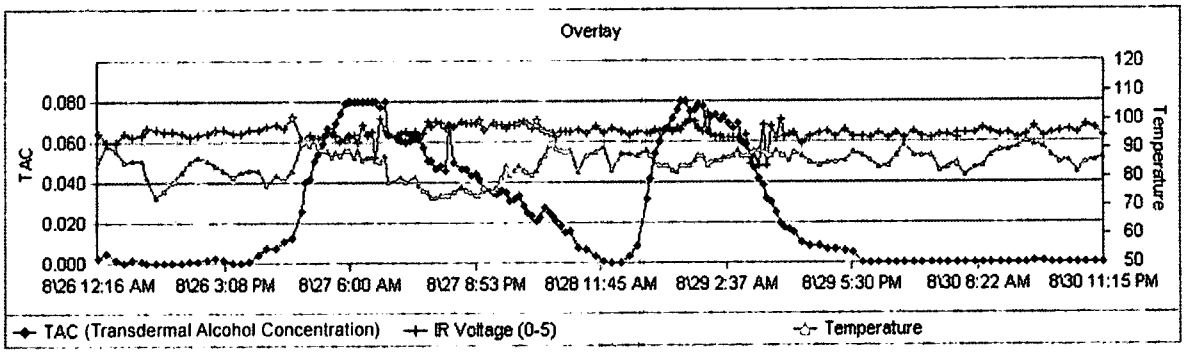
2. CAM established as a sentencing alternative to ensure compliance with conditions of release, probation or parole for DWI offenders

3. Offenders with permanently suspended driver's licenses eligible for Ignition Interlock-restricted licenses following one year proven abstinence on CAM.

What is CAM?

- A service that continuously (24/7/365) monitors alcohol consumption.
- Samples a person's perspiration, automatically and hourly, in order to measure for alcohol consumption
- Data is automatically downloaded daily via a modem placed in the person's home, which is reported to pre-trial services, probation and courts





What Does CAM do?

- **Assessment** – Can this person not drink? (eg. use for Pre-trial monitoring, DMV assessment, DSS evaluation)
- **Detection** – Is the offender unlawfully consuming? (when used to ensure probation compliance regarding prohibited alcohol consumption)
- **Deterrence** – Helps person avoid the first, next drink (provides 24/7 "accountability" during addiction treatment)

Benefits of CAM:

- **Enhanced community safety** – Deters alcohol consumption. Approx. 90% of NC offenders assigned to CAM don't drink while being monitored. "***If they're not drinking, they're not driving drunk***".
- **Cost Savings** – 10 offenders/yr saves over $140,000/year for a typical NC county, over $220,000/year versus state prison.
- **Supporting Rehabilitation** – 24/7 "accountability" is a highly effective complement to addition treatment.

NC CAM usage to date

- CAM has now been used in 23 NC Counties, w/ 400+ NC clients, over 27,000+ monitoring days. No known NC DWI while clients monitored by CAM
- 38 NC District Court Judges and 10 Superior Court Judges have now used CAM in adjudications
- Mecklenburg, Wake, Durham, Orange, Chatham and Gaston Counties are most active.
- Across the US...33,000+ CAM clients thus far, 2,500,000 monitoring days, used in 41 states



Mothers Against Drunk Driving
NORTH CAROLINA CHARTER OFFICE
5104 Western Blvd., Suite B
Raleigh, NC 27606
Phone (919)787-6599
(800)248-6233
Fax (919)787-6330

May 7, 2007

Dear Senator John Snow:

Technology is changing the way we are able to approach the crime of drunk driving. Right now, North Carolina judges frequently require offenders not to drink alcohol as a condition of probation, but do not have the means to enforce those provisions effectively. To give them these tools, MADD supports NC House Bill 1408 and NC Senate Bill 1290, which specify use of ccontinuous alcohol monitoring technologies as an optional tool in a judge's tool kit against DWI offenses and underage drinking.

These devices attach to the ankle of an offender and monitor alcohol use of that offender. Studies indicate that 70 to 80 percent of drunk driving offenders have an alcohol use problem, so this technology monitors an offender's progress. In fact, the technology can be used to determine who does and does not have a problem with alcohol. These bills allow for an offender to be monitored voluntarily pre-trial and, if abstinence has been maintained, to use their data mitigating evidence, allowing the courts to make better decisions as to what sanctions are most appropriate for which offender.

The second use for this type of technology is to allow it to be used as a condition of probation or parole. Judges should have the latitude to be able to use technology to make sure their orders are being followed. These devices free up valuable probation resources, as the devices are able to do through electronic monitoring.

Finally, the bill allows for those offenders who have permanent driver's license revocations and who can prove their long- term abstinence with CAM to receive interlock-restricted licenses. This allows those who can demonstrate control over alcohol consumption to more safely and more quickly re-enter society.

In sum, we hope these devices can be used not as a punitive measure, but as a guide down the path to reduce recidivism. Thank you for your consideration and we hope to hear from you that you support House Bill 1408/Senate Bill 1290.

Thank you,

Craig Lloyd
Mothers Against Drunk Driving of NC (MADD)
State Executive Director

North Carolina Association of Drug Court Professionals
13016 Eastfield Road Suite 200 – 350 Huntersville, NC 28078

May 4, 2007

To the NC Senate Judiciary I Committee:

The North Carolina Association of Drug Court Professionals has reviewed Senate Bill 1290. It is in the interest of all the citizens of North Carolina to reduce the number of DWI offenders including the chronic offender. To meet that goal, the NCADCP strongly recommends Continuous Alcohol Monitoring (CAM) as an option for court officials.

We believe that Continuous Alcohol Monitoring (CAM) has shown that it is an accurate method for detecting alcohol consumption. It is vital for court officials, probation, and others to know who is and who is not complying with court orders for abstinence. We all know that traditional random testing has limitations. Because they are continuous, the CAM bracelets are dramatically more effective. There is no more guesswork.

CAM also provides the offender with additional motivation to stay sober. Many who have used CAM on their court ordered program make the claim that the CAM kept them honest. They knew they could not cheat and get away with it. This is a profound deterrent. It helps the client directly, but also indirectly toward a paradigm shift that understands cheating hurts oneself. Doing the right thing has long-term benefits.

Alcohol abuse is not a simple matter. Courts need good people and good tools. The NCADCP advocates for passage of Senate Bill 1290 because CAM's are a very good tool that court officials should be able to use when appropriate. We offer our robust support for Senate Bill 1290.

Thank you for your consideration.

Yours truly,

Donald G. Tourtellott

Donald G. Tourtellott
President

704.992.1820
704.654.8890 mobile

An Overview of

Senate Bill 1290
"Alcohol Monitoring Systems for DWI Offenders"

Sponsors: Senator John Snow
Senator Doug Berger

May 8, 2007

Discussion Topics

- Continuous Alcohol Monitoring in NC - a Snapshot
- SB 1290 – Overview
- CAM Technical Overview
- CAM use in the US and in North Carolina

Continuous Alcohol Monitoring ("CAM")

- Fundamentally different way to address alcohol related crime… restricting alcohol consumption… the cause of the crime
- Enables 24/7 monitoring of alcohol consumption of offenders through "transdermal" detection (i.e. alcohol in perspiration)
- While monitored, offender can meet family, work and other obligations
- Enables reliable assessment, detection and deterrence of alcohol consumption… here-to-fore, very difficult and expensive to achieve
- A valuable complement to addiction treatment

CAM in NC - a Snapshot

12/04 - First installation (Orange Co.)
3/05 - First NC Drug Treatment Court Usage (Mecklenburg Co.)
1/06 - 130+ NC installations, 7000+ monitoring days
1/07 - 340+ NC installations, 23,000+ monitoring days

- CAM is now being used for DWI (pre-trial release & probation), DSS/foster care parental evaluations and for domestic violence sanctioning; all in conjunction with substance abuse assessments and treatment.
- Approx 90% of NC offenders assigned to CAM have remained totally abstinent (80% including voluntary CAM clients).

CAM in NC - a Snapshot

To Date:

- CAM has now been used in 23 NC Counties, w/ 400+ NC clients, over 27,000+ monitoring days
- 38 NC District Court Judges and 10 Superior Court Judges have now used CAM in adjudications
- Mecklenburg, Wake, Durham, Orange, Chatham and Gaston Counties are most active.
- Savings to date are estimated to be $1,000,000+ for NC counties versus detention

Alcohol considerations

- Drinking alcohol is legal
- Driving while intoxicated is not legal
- 33%+ of jail inmates consumed alcohol at the time of their arrest, 60% are regular drinkers (FBI Statistics)
- Approx. 8% of persons are vulnerable to addiction

The challenges…

- How to constructively respond to alcohol-related crime?
- How to tell who's addicted, from those with an isolated case of bad judgment?
- How to deter excessive consumption in the future?
- How to break the cycle of continued alcohol abuse, subsequent arrest and ever stiffer punishment?

SB1290/HB1408 – Proposed action

1. New, formally admissible, mitigating evidence created for DWI cases requiring the completion of both of 1) substance abuse assessment and recommendations, and, simultaneously, 2) 60 days of continual abstinence, as proven by CAM.
2. CAM established as a sentencing alternative to ensure compliance with conditions of release, probation or parole for DWI offenders
3. Offenders with permanently suspended driver's licenses eligible for Ignition Interlock-restricted licenses following one year proven abstinence on CAM.

#1 – Substance abuse assessment, related treatment and CAM, specified as mitigating evidence in DWI sentencing

Issue – Can the offender "not drink"? Judges want to know

Issue – DWI offenders awaiting trial still a risk for another DWI

Solution – CAM identifies offenders whom can stop drinking from those who can't…

Solution – CAM deters drinking & helps avoid another DWI

Solution - Treatment w/ accountability (i.e. CAM), the earlier the better

Solution – As "Mitigating Evidence", DWI offenders would have an incentive to begin treatment while being monitored… soon after the offense

#2 - CAM as a sentencing alternative to ensure compliance with conditions of release, probation or parole for DWI offenders

Issue – Jails chronically overcrowded and expensive

Issue – Jail leads to job loss, family disruption and social service expense

Issue – Jail alone doesn't address alcoholism…

Solution – CAM saves over $150,000/yr/10 offenders vs. county jail costs

Solution - Treatment w/ accountability (i.e. CAM) addresses causal factors

Solution – w/ CAM, jobs are being maintained, families kept together and alcoholism addressed

SCRAM – Costs Counties Less than Jail
(Savings/10 Offenders/year*)

Jail Cost/Inmate	SCRAM/Day	Savings/ 10 Offenders/yr
$50/Day	$12/Day	$134,200
$75/Day	$12/Day	$225,450
$100/Day	$12/Day	$316,700

*Assumes County pays SCRAM Fees ($75 at install, $12/day monitored)

#3 - Offenders with permanently suspended driver's licenses eligible for Ignition Interlock-restricted licenses following one year proven abstinence on CAM.

Issue – Persons with suspended licenses drive anyway (est. 80%+ drive, est. 25,000+ in NC)

Issue – These drivers aren't insured.

Solution – CAM proves to DMV those who can control alcohol consumption from those who can't.

Solution – CAM can accelerate the offender's return to normal life…a benefit to <u>all</u>

What does CAM do?

CAM is a continuous alcohol monitoring tool enabling…

- **Assessment** – Can this person not drink? (eg. Pre-trial, DMV assessment, DSS evaluation)
- **Detection** – Is the offender unlawfully consuming? (when used w/ probation)
- **Deterrence** – Help keep them from the first, next drink (providing 24/7 "accountability" during treatment)

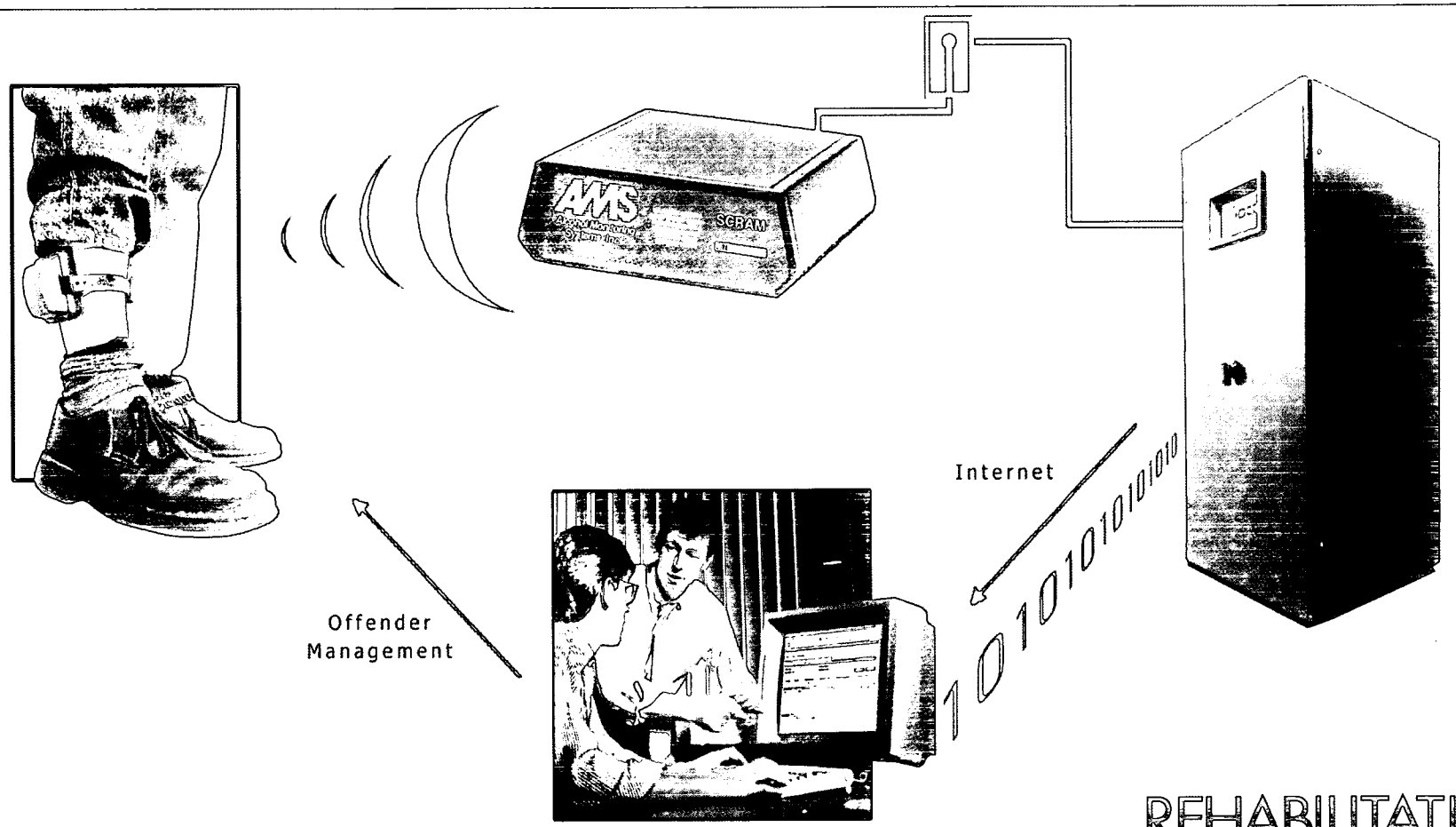
➡ This is only possible with CAM

How "SCRAM" Works...

- Detects alcohol excreted through the skin (perspiration in the form of water vapor)
- Measures alcohol like a breathalyzer (fuel cell based)
- Wirelessly transmits data from clients ankle...to modem...to computer...to secure internet site
- RSS tracks client activity, reports alcohol consumption or "tampers", as appropriate

REHABILITATION
SUPPORT SERVICES

The SCRAM System

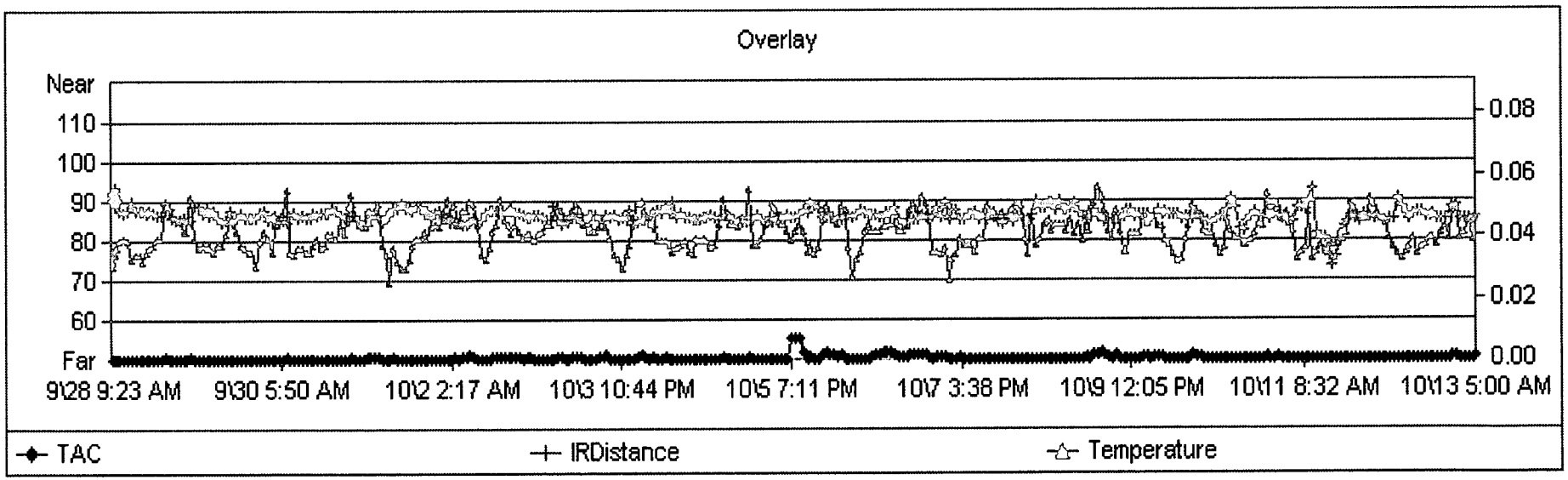


REHABILITATION
SUPPORT SERVICES

What Does SCRAM Measure?

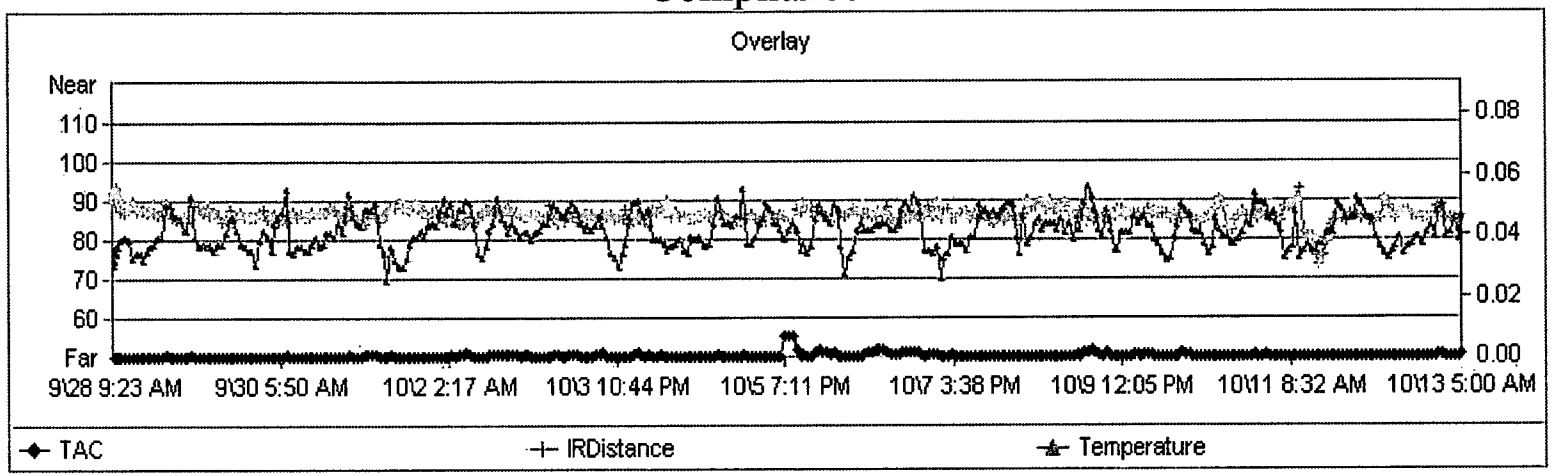
Three measurements taken:

- Ethanol
- Temperature
- IR

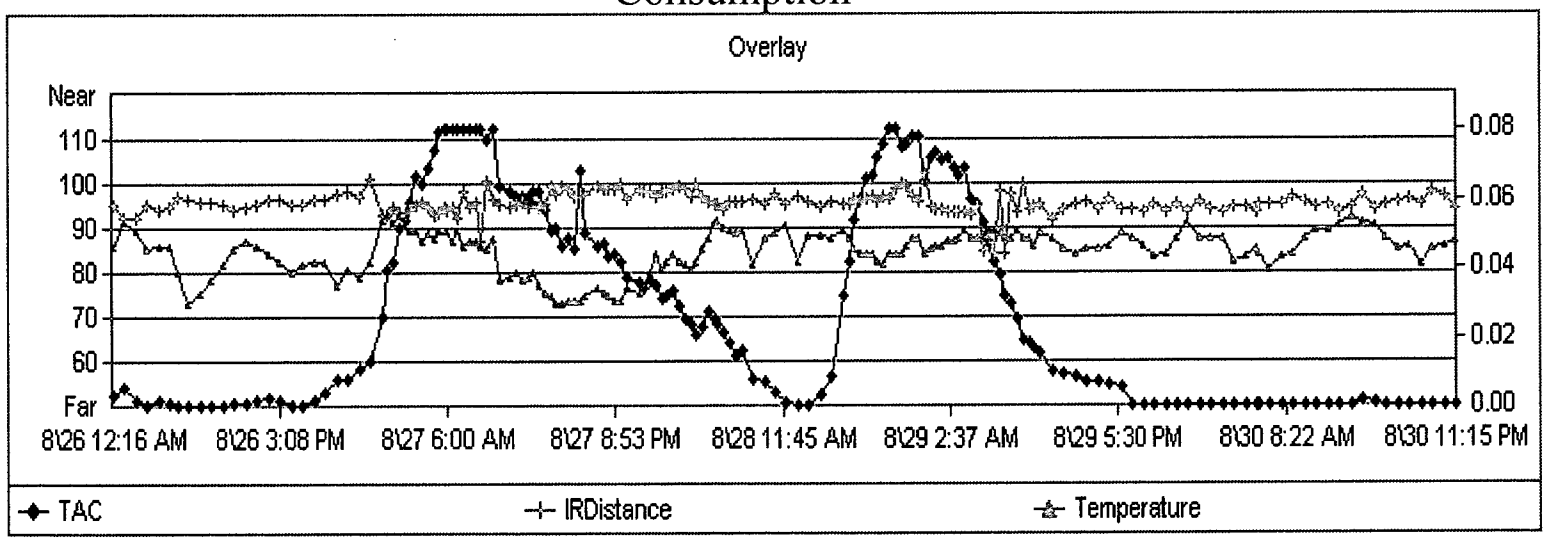


Examples of Monitoring Charts

Compliance

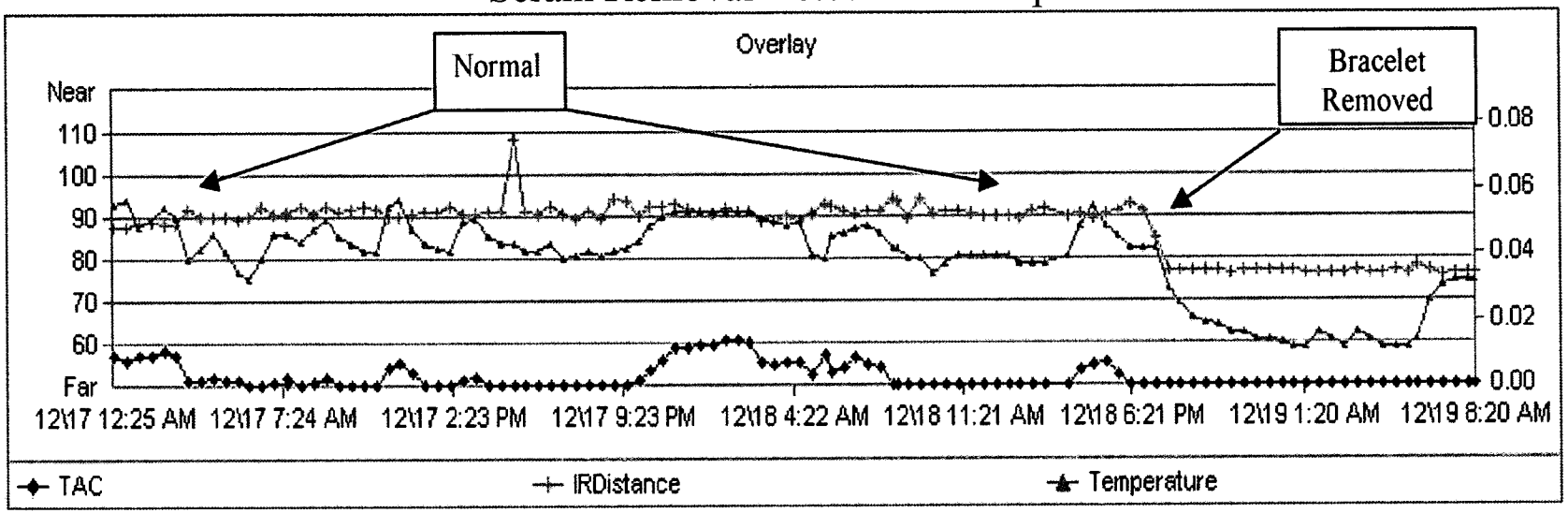


Consumption

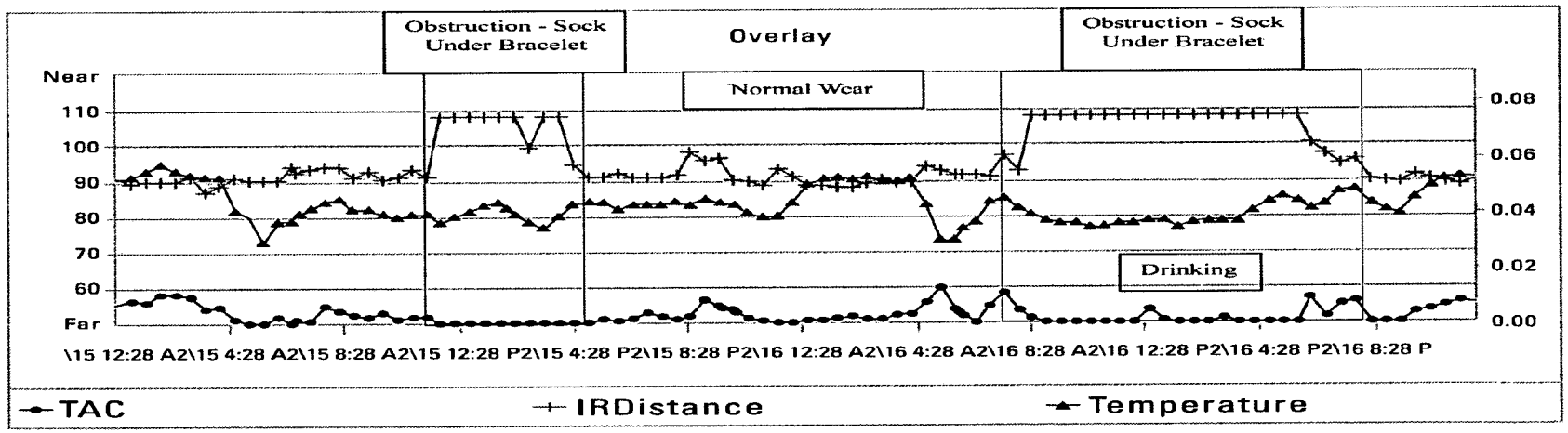


Examples of Monitoring Charts

Scram Removal Detection Example



Obstruction: Thick Tan Sock



US SCRAM Usage (through March 15, 2007)

- States with Operational SCRAM Programs: 41
- Courts/Agencies Using SCRAM: 851
- Lifetime Clients Monitored: 33,031
- Alcohol Tests Performed: 61,603,873
- Monitoring Data:
  - Total Monitoring Days 2,558,547
  - Average Monitoring Period/Days: 75
  - Average Number Tests per Day: 24
  - Average Number Tests per Monitoring Period 1,893
  - 2006 Compliance 70%

North Carolina SCRAM Program Analysis
(January 1, 2005 -- March 31, 2007)

First Client Installed* 4/25/05

Clients to Date

Completed	374 clients
Currently Installed	23 clients
Total Clients	397 clients

Bracelet Days (03/01/05 - 3/31/07)

Clients Completed	25542 days
Clients Currently Enrolled	1394 days
Total	26936 days

Compliance Summary	Completed Clients		All Clients	
Non-Compliant Clients	75		84	
Compliant Clients	299	79.9%	313	78.8%

Assignment Terms	Comleted Clients	All Clients
Maximum	332 days	332 days
Minimum	1 days	1 days
Average	66 days	65 days

Confirmed Alerts

Alcohol	21 clients	21 clients
Tamper	54 clients	63 clients
Communication	0 clients	0 clients
Total	75 clients	84 clients

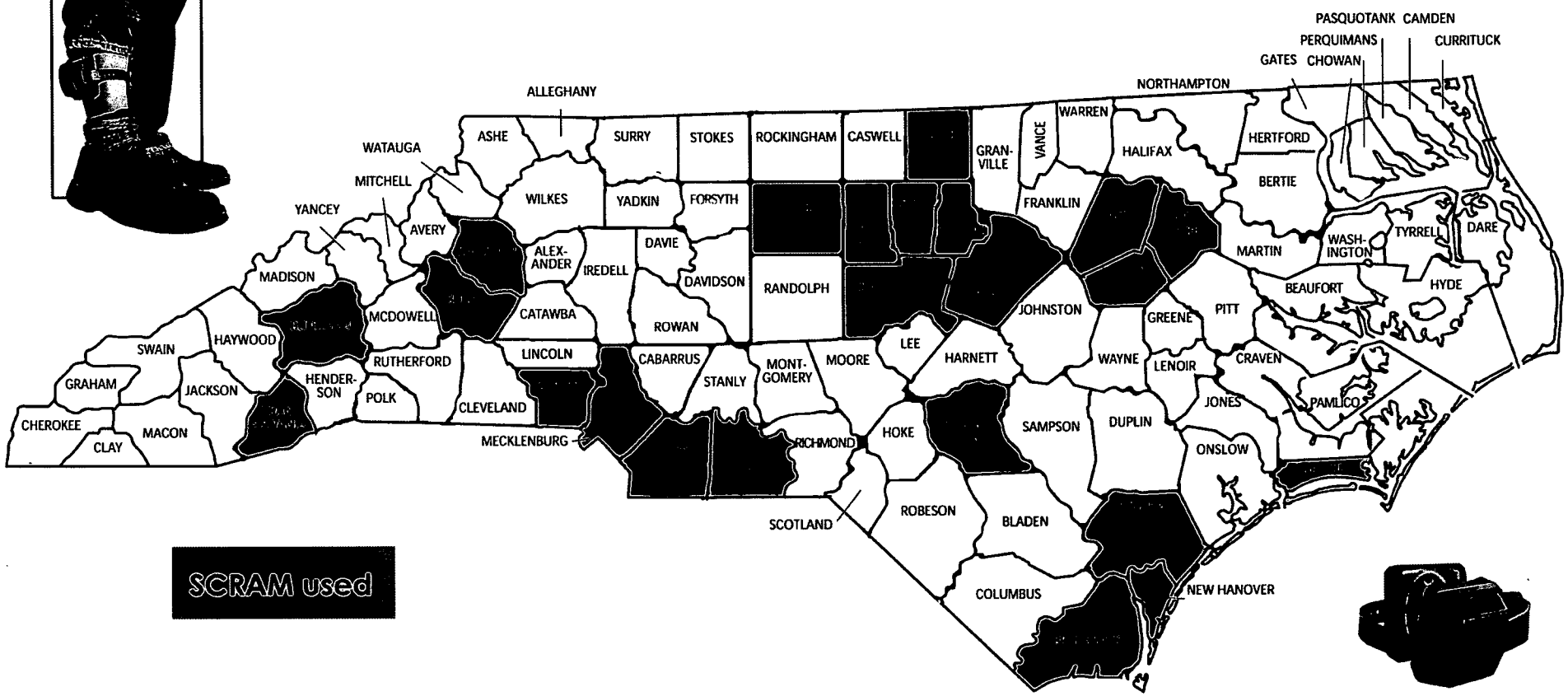
Demographics*	Completed Clients	All Clients
Male Clients	260 clients	281 clients
Female Clients	58 clients	60 clients
Averege Age of Clients	33 years	35 years
Oldest Client	76 years	76 years
Clients "Under 21"	38 clients	42 clients

* The figures reflect data of Rehabilitation Support Services only

REHABILITATION SUPPORT SERVICES

SCRAM in North Carolina





SCRAM used

REHABILITATION
SUPPORT SERVICES

Current SCRAM Applications in NC

As a term of Probation for:

- Multiple DWI
- Under age drinking/driving
- Domestic Violence

Also used for:

- Pre-trail release
- In support of Drug/Alcohol Courts
- DSS (in support of child custody privileges)
- Supporting work release privileges

Rehabilitation Support Services – RSS

Headquartered in Brevard, NC, founded early 2005 with local staff in North Carolina and also in Florida

- **SCRAM Service Provider for North Carolina and parts of Florida. Owns SCRAM units, leases to clients and provides 24/7 monitoring to clients including individuals, Courts, DMV and Treatment Providers**
- **Local RSS Field Representatives**

Bruce Roberts – President and Founder

Tel: 828-883-2316 ext. 24 email: broberts@rehabsupport.org

REHABILITATION
SUPPORT SERVICES

www.rehabsupport.org

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1480

Short Title:	Medical Release for Ill and Disabled Inmates.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION AND THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO PROVIDE FOR MEDICAL RELEASE OF NO-RISK INMATES WHO ARE EITHER PERMANENTLY AND TOTALLY DISABLED, TERMINALLY ILL, OR GERIATRIC.

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 84B.

"Medical Release of Inmates.

"**§ 15A-1369. Definitions.**

For purposes of this Article, the term:

(1) "Commission" means the Post-Release Supervision and Parole Commission.

(2) "Department" means the Department of Correction.

(3) "Geriatric" describes an inmate who is 65 years of age or older and suffers from chronic infirmity, illness, or disease related to aging that did not exist at the time of sentencing and makes it highly unlikely that the inmate poses a significant public safety risk.

(4) "Inmate" means any person sentenced to the custody of the Department of Correction.

(5) "Medical release" means a program enabling the Commission to release no-risk inmates who are either permanently and totally disabled or terminally ill.

(6) "Permanently and totally disabled" describes an inmate other than an inmate convicted of a capital felony or a Class A, B1, or B2 felony who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing

physical or medical condition that was unknown at the time of sentencing and was not diagnosed upon entry to prison and that is so incapacitating that it is highly unlikely that the inmate poses a significant public safety risk.

(7) "Terminally ill" describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing and was not diagnosed upon entry to prison, that will likely produce death within six months, and that is so debilitating that it is highly unlikely that the inmate poses a significant public safety risk.

"**§ 15A-1369.1. Authority to release.**

The Commission shall establish a medical release program to be administered by the Department. The Commission shall prescribe when and under what conditions an inmate may be released for medical release, consistent with the provisions of G.S. 15A-1369.4. The Commission may adopt rules to implement the medical release program.

"**§ 15A-1369.2. Eligibility.**

(a) Except as otherwise provided in this section, notwithstanding any other provision of law, an inmate is eligible to be considered for medical release if the inmate is:

(1) Diagnosed as permanently and totally disabled, terminally ill, or geriatric under the procedure described in G.S. 15A-1369.3(b)(1); and

(2) Assessed by the Department to pose no risk to society, as described in G.S. 15A-1369.3(b)(2).

(b) Persons convicted of a capital felony or a Class A, B1, or B2 felony and persons convicted of an offense that requires registration under Chapter 27A of the General Statutes shall not be eligible for release as permanently and totally disabled or geriatric under this Article.

"**§ 15A-1369.3. Procedure for medical release.**

(a) The Commission shall consider an inmate for medical release upon referral by the Department. The Department may base its referral upon either a request or petition for release filed by the inmate, the inmate's attorney, or the inmate's next of kin or upon a recommendation from within the Department.

(b) The criteria for referral shall include an assessment of the inmate's medical condition and the risk the inmate poses to society, as follows:

(1) Both the Department medical director, or a designee of the director who is a licensed physician, and an independent licensed physician approved by the Department shall review the case of each inmate who has applied for or has been recommended for medical release. Any physician who examines an inmate being considered for medical release shall prepare a written diagnosis that includes:

a. A description of any and all terminal conditions, physical incapacities, and chronic conditions; and

b. A prognosis concerning the likelihood of recovery from any and all terminal conditions, physical incapacities, and chronic conditions.

(2) The Department shall make an assessment of the risk for violence and recidivism that the inmate poses to society. In order to make this assessment, the Department may consider such factors as the inmate's medical condition, the severity of the offense for which the inmate is incarcerated, the inmate's prison record, and the release plan. The Department shall also provide the victim or victims of the inmate or the victims' family or families with an opportunity to be heard.

(c) If the inmate meets the criteria for release, the Department shall forward its referral and medical release plan for the inmate to the Commission. The Department shall complete the risk assessment and forward its referral and medical release plan within 30 days of receiving a request, petition, or recommendation for release of a terminally ill inmate and within 30 days of receiving a request, petition, or recommendation for release of a permanently and totally disabled inmate or a geriatric inmate.

(d) The Commission shall make a determination of whether to grant medical release within 15 days of receiving a referral from the Department for release of a terminally ill inmate and within 20 days of receiving a referral from the Department for release of a permanently and totally disabled inmate or a geriatric inmate.

(e) A denial of medical release by the Commission shall not affect an inmate's eligibility for any other form of parole or release under applicable law.

(f) If the Department determines that an inmate should not be considered for release under this Article or the Commission denies medical release under this Article, the inmate may not reapply or be reconsidered unless there is a demonstrated change in the inmate's medical condition.

"**§ 15A-1369.4. Conditions of medical release.**

(a) The Commission may set reasonable conditions upon an inmate's medical release that shall apply for any length of time determined by the Commission through the date upon which the inmate's sentence would have expired. These conditions may include:

(1) That the released inmate may be placed in a hospital, hospice, or other institution as specified by the Commission; and

(2) That the Department shall receive periodic assessments from the inmate's treating physician.

Inmates who are granted medical release are subject to supervision by the Division of Community Corrections and any conditions set by the Commission.

(b) The Commission shall revoke an inmate's medical release if the Commission determines that an inmate has failed to comply with any reasonable condition set upon the inmate's release. If the Commission revokes an inmate's medical release, the inmate shall be returned to the custody of the Department and shall resume serving the balance of the sentence with credit given only for the duration of the inmate's medical release served in compliance with all reasonable conditions set forth pursuant to subsection (a)

of this section. Revocation of an inmate's medical release for violating a condition of release shall not preclude an inmate's eligibility for any other form of parole or release provided by law but may be used as a factor in determining eligibility for that parole or release.

"**§ 15A-1369.5. Change in medical status.**

(a) If a periodic diagnosis reveals that an inmate released on medical release has improved so that the inmate would not be eligible for medical release if being considered at that time, the Commission may order the inmate returned to the custody of the Department to await a revocation hearing. In determining whether to revoke medical release, the Commission may consider the most recent periodic diagnosis of the inmate and a risk assessment of the inmate conducted pursuant to G.S. 15A-1369.3(b)(2). If the Commission revokes the inmate's medical release, the inmate shall resume serving the balance of the sentence with credit given for the duration of the medical release.

(b) Revocation of an inmate's medical release due to a change in the inmate's medical condition shall not preclude an inmate's eligibility for medical release in the future or for any other form of parole or release provided by law."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1480
PROPOSED COMMITTEE SUBSTITUTE S1480-CSTC-23 [v.7]

5/7/2007 10:58:00 PM

Short Title: Medical Release for Ill and Disabled Inmates. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION AND THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO PROVIDE FOR MEDICAL RELEASE OF NO-RISK INMATES WHO ARE EITHER PERMANENTLY AND TOTALLY DISABLED, TERMINALLY ILL, OR GERIATRIC.

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 84B.

"Medical Release of Inmates.

"**§ 15A-1369. Definitions.**

For purposes of this Article, the term:

(1) "Commission" means the Post-Release Supervision and Parole Commission.

(2) "Department" means the Department of Correction.

(3) "Geriatric" describes an inmate who is 65 years of age or older and suffers from chronic infirmity, illness, or disease related to aging that either did not exist at the time of sentencing or since the time of sentencing has progressed to render the inmate permanently and totally disabled or terminally ill, such that the inmate is incapacitated to the extent that the inmate does not pose a public safety risk.

(4) "Inmate" means any person sentenced to the custody of the Department of Correction.

(5) "Medical release" means a program enabling the Commission to release inmates who are permanently and totally disabled, terminally ill, or geriatric.

(6) "Medical Release Plan" means a comprehensive written medical care plan that is specific to the inmate and includes, at a minimum, the proposed course of treatment, the proposed site for treatment and post-treatment care, and the financial program in place to cover the cost of this plan for the duration of the medical release.

(7) "Permanently and totally disabled" describes an inmate who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was unknown at the time of sentencing or since the time of sentencing has progressed to render the inmate permanently and totally disabled, such that the inmate does not pose a public safety risk.

(8) "Terminally ill" describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or since the time of sentencing has progressed to render the inmate terminally ill, and that will likely produce death within six months, and that is so debilitating such that the inmate does not pose a public safety risk.

"**§ 15A-1369.1. Authority to release.**

The Commission shall establish a medical release program to be administered by the Department. The Commission shall prescribe when and under what conditions an inmate may be released for medical release, consistent with the provisions of G.S. 15A-1369.4. The Commission may adopt rules to implement the medical release program.

"**§ 15A-1369.2. Eligibility.**

(a) Except as otherwise provided in this section, notwithstanding any other provision of law, an inmate is eligible to be considered for medical release if the Department determines that the inmate is:

(1) Diagnosed as permanently and totally disabled, terminally ill, or geriatric under the procedure described in G.S. 15A-1369.3(b)(1); and

(2) Incapacitated to the extent that the inmate does not pose a public safety risk.

(b) Persons convicted of a capital felony or a Class A, B1, or B2 felony and persons convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes shall not be eligible for release under this Article.

"**§ 15A-1369.3. Procedure for medical release.**

(a) The Commission shall consider an inmate for medical release upon referral by the Department. The Department may base its referral upon either a request or petition for release filed by the inmate, the inmate's attorney, or the inmate's next of kin or upon a recommendation from within the Department.

(b) The referral shall include an assessment of the inmate's medical condition and the risk the inmate poses to society, as follows:

(1) The Department medical director, or a designee of the director who is a licensed physician, shall review the case of each inmate who meets

the eligibility requirements for medical release set forth in § 15A-1369.2. Any physician who examines an inmate being considered for medical release shall prepare a written diagnosis that includes:

a. A description of any and all terminal conditions, physical incapacities, and chronic conditions; and

b. A prognosis concerning the likelihood of recovery from any and all terminal conditions, physical incapacities, and chronic conditions.

(2) The Department shall make an assessment of the risk for violence and recidivism that the inmate poses to society. In order to make this assessment, the Department may consider such factors as the inmate's medical condition, the severity of the offense for which the inmate is incarcerated, the inmate's prison record, and the release plan.

(c) If the Department determines that the inmate meets the criteria for release, the Department shall forward its referral and medical release plan for the inmate to the Commission. The Department shall complete the risk assessment and forward its referral and medical release plan within 45 days of receiving a request, petition, or recommendation for release.

(d) The Commission shall make a determination of whether to grant medical release within 15 days of receiving a referral from the Department for release of a terminally ill inmate and within 20 days of receiving a referral from the Department for release of a permanently and totally disabled inmate or a geriatric inmate. In making the determination, the Commission shall make an independent assessment of the risk for violence and recidivism that the inmate poses to society. The Commission also shall provide the victim or victims of the inmate or the victims' family or families with an opportunity to be heard.

(e) A denial of medical release by the Commission shall not affect an inmate's eligibility for any other form of parole or release under applicable law.

(f) If the Department determines that an inmate should not be considered for release under this Article or the Commission denies medical release under this Article, the inmate may not reapply or be reconsidered unless there is a demonstrated change in the inmate's medical condition.

"**§ 15A-1369.4. Conditions of medical release.**

(a) The Commission may set reasonable conditions upon an inmate's medical release that shall apply for any length of time determined by the Commission through the date upon which the inmate's sentence would have expired. These conditions may include:

(1) That the released inmate's care be consistent with the care specified in the Medical Care Plan as approved by the Commission; and

(2) That the Department shall receive periodic assessments from the inmate's treating physician.

Inmates who are granted medical release are subject to supervision by the Division of Community Corrections and any conditions set by the Commission.

(b) The Commission shall revoke an inmate's medical release if the Commission determines that an inmate has failed to comply with any reasonable condition set upon the inmate's release. If the Commission revokes an inmate's medical release, the inmate shall be returned to the custody of the Department and shall resume serving the balance of the sentence with credit given only for the duration of the inmate's medical release served in compliance with all reasonable conditions set forth pursuant to subsection (a) of this section. Revocation of an inmate's medical release for violating a condition of release shall not preclude an inmate's eligibility for any other form of parole or release provided by law but may be used as a factor in determining eligibility for that parole or release.

"**§ 15A-1369.5. Change in medical status.**

(a) If a periodic medical assessment reveals that an inmate released on medical release has improved so that the inmate would not be eligible for medical release if being considered at that time, the Commission may order the inmate returned to the custody of the Department to await a revocation hearing. In determining whether to revoke medical release, the Commission may consider the most recent medical assessment of the inmate and a risk assessment of the inmate conducted pursuant to G.S. 15A-1369.3(b)(2). If the Commission revokes the inmate's medical release, the inmate shall resume serving the balance of the sentence with credit given for the duration of the medical release.

(b) Revocation of an inmate's medical release due to a change in the inmate's medical condition shall not preclude an inmate's eligibility for medical release in the future or for any other form of parole or release provided by law."

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

SENATE BILL 1480:
Medical Release for Ill and Disabled Inmates

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 8, 2007
Introduced by:	Sen. Rand	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S1480-CSTC		Committee Counsel

SUMMARY: ***Senate Bill 1480 would create a new article to provide for medical release of inmates who meet certain criteria, are either geriatric, permanently and totally disabled, or terminally ill, and who do not pose a public safety risk.***

CURRENT LAW: The General Statutes do not currently provide for medical release of inmates.

BILL ANALYSIS: Senate Bill 1480 would create a new article in Chapter 15A to provide for medical release of inmates.

Key definitions

- ***Geriatric:*** An inmate 65 or older who is 1) suffering from a chronic infirmity, illness, or aging related disease that either did not exist at the time of sentencing or progressed to render the inmate permanently disabled or terminally ill, 2) which has rendered the inmate incapacitated to the point the inmate is not a public safety risk.
- ***Medical Release Plan:*** A comprehensive written medical care plan specific to the inmate which includes a proposed: 1) course of treatment, 2) site for treatment and post-treatment care, and 3) financial program to cover costs for duration of medical release.
- ***Permanently and totally disabled:*** An inmate who is determined by a licensed physician to be 1) suffering from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was either unknown at sentencing or progressed to render the inmate permanently disabled, 2) so that the inmate is not a public safety risk.
- ***Terminally Ill***: An inmate who is determined by a licensed physician to 1) have an incurable condition caused by illness or disease that was either unknown at sentencing or progressed to render the inmate terminally ill, 2) will likely produce death within 6 months, and 3) is so debilitating that the inmate is not a public safety risk.

Authority: The Post-Release Supervision and Parole Commission (Commission) shall establish a medical release program to be administered by the Department of Corrections (Department).

Eligibility: Inmates that are 1) diagnosed as permanently and totally disabled, terminally ill, or geriatric, and 2) who are incapacitated to the extent they do not pose a public safety threat are eligible for consideration of medical release, subject to the following exceptions:

- Those convicted of a capital felony, a Class A, B1 or B2 felony, or an offense requiring registration under Article 27A of Chapter 14 (Sex Offender and Public Protection Registration Programs) are not eligible for medical release.

Procedure

- **Referral:** Inmates may be considered for medical release upon referrals by the Department to the Commission. The referral may be based on a request of petition from 1) the inmate, 2) the inmate's attorney, 3) the inmate's next of kin, or 4) a Department internal recommendation.

- **Risk Assessment:** Referrals must include a risk assessment of 1) the inmate's medical condition as reviewed by the Department medical director or designee, 2) the risk the inmate poses to society as determined by the Department. The risk assessment must be completed within 45 days of the request.
- **Commission's Determination:** If the Department determines the inmate meets the release criteria, the referral and medical release plan are forwarded to the Commission. The Commission must 1) make an independent risk assessment and 2) provide victims and the family of victims the opportunity to be heard. The Commission must determine if medical release is to be granted with 15 days for a terminally ill patient, and 20 days for a permanently disabled or geriatric patient.
- **Denials:** Denial of medical release shall not affect an inmate's eligibility for other forms of parole or release. If an inmate is denied medical release or if the Department determines the inmate should not be considered, the inmate may not reapply or be reconsidered unless there is a demonstrated change in medical condition.

Conditions of Release

- **Conditions:** The Commission may set reasonable conditions on medical release that may apply through the date the inmate's sentence would have expired, including that care be consistent with the care specified in the Medical Care Plan, and that the Department receive periodic assessments from the treating physician.
- **Supervision:** Inmates granted medical release are subject to supervision by the Division of Community Corrections.
- **Revocations:** The Commission may revoke the inmate's medical release if the inmate fails to comply with the reasonable conditions set upon the inmate's release. If the medical release is revoked, the inmate is returned to the Department's custody and resumes serving the balance of the inmate's sentence, with credit for the duration of the medical release served in compliance with the reasonable conditions. Revocation of medical release for violating a reasonable condition shall not preclude eligibility for other forms or release or parole provided by law, but may be used as a factor in such determinations.

Change in Medical Status

- If a periodic assessment shows that an inmate on medical release has improved so that the inmate would not be eligible for medical release if considered at that time, the Commission may order the inmate returned to the Department's custody for a revocation hearing, where the Commission will consider the most recent medical assessment and a risk assessment of the inmate. If the inmate's medical release is revoked due to change in medical status, the inmate will resume serving the sentence with credit for the time on medical release.
- Revocation of medical releases due to a change in status will not preclude eligibility for medical release in the future or other forms of parole or release.

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

S1480e1-SMTC-CSTC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 8, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Rob Wall	AOC
[illegible]	AOC
John Bowdish	AG
Jonathon Ducote	NCGA Staff
Eric Sauls	Edmisten & Webb
Matthew L. McConnell	Carolinas Healthcare Syst
Mike Mason	NCFA
Deanna Jessup	NCUC Public Staff
R Kaylor	Kaylor Law Firm

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 8, 2007

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Inspector Inc.
Charlie Mann	Parole
Patsy R. Jeiner	Parole Commission Yorkes Rd.
[signature]	[illegible]
Chrystal Medlin	Senator Boseman guest
Gary Holt	Senator Kinnaird guest
Hugh Tilson	NCHA
Tracy Little	NC DOC
Tim Moore	NC DOC-DCC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 8, 2007

Name of Committee — **Date**

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Scott Galonca	Duke Energy
Rufus L. Edmisten	Edmisten & Webb
Kathy Hawkins	Progress Energy
Elizabeth Self	DENR
William Willets	DAQ
Keith Overcash	DAQ
Mike Abraczinskas	DAQ
Cathy Matthews	DMV
Ken Waleud	Rep. Trudi Waleud
Ken Rabb	Phelps Communications
Michael Glass	(APNC) Addiction Professionals of NC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 8, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Salamido	GSK
Preston Howard	MCIC
John McMillan	MFS
John Madler	NC Sentencing Commission
David Hastings	NOC
Marcus Brown	APNC
R. Bud Collins	NCHBA

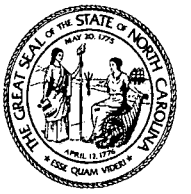
VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — May 8, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jose Trevino	RSG. 8030 Renaissance Pkwy
Ken Hewatt, COT	201 TOWN CREEK, CARY
Marcus E. Hill	311 E Main St Durham NC 27701
Lara Kabat	Sen. Basnight
John "Randy" Griffin	Attorney 300 E Main St Durham NC 27701
Boyd Cauble	City of Charlotte
Kevin Fitzgerald	UNC
David Neal	BPMHL
Vivian Jones	Town of Wake Forest
Peyton Mayo	
	HHS



NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY COMMITTEE
2007-2008 SESSION
Senator Martin L. Nesbitt, Chairman

Dan Clodfelter, Vice-Chairman
Room 408 LOB – 7158331

Sen. R. C. Soles Vice-Chairman
Rm 2022 - 733-5963

Sen. Phil Berger Vice-Chairman
Rm 1026 – 715-2525

Senator Charlie Albertson
525 LOB -733-5705

Sen. Julia Boseman
Rm 309 LOB – 715-2525

Sen. Andrew Brock
Rm 1119 – 715-0690

Sen. Harry Brown
620 LOB - 715-3034

Sen. Pete Brunstetter
Rm 1119 – 733-7850

Sen. Janet Cowell
Rm 1028 – 715-6400

Sen. Malcolm Graham
Rm 620 LOB – 733-5650

Sen. David Hoyle
300 A LOB - 733-5734

Sen. Clark Jenkins
308 LOB - 715-3040

Sen. Ellie Kinnaird
Rm 2115 – 733-5804

Sen. Vernon Malone
Rm 313 LOB – 733-5880

Sen. Floyd McKissick
Rm 621 LOB 733-4599

Sen. Tony Rand
300 C LOB - 733-9892

Committee Staff:
Erika Churchill
Bill Gilkeson
Kara McCraw
Hal Pell
Denise Huntley, Research Assistant
733-2578
Jan Lee, Committee Assistant
715-3001

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I COMMITTEE
2007-2008 SESSION



Senator Martin Nesbitt
Chairman



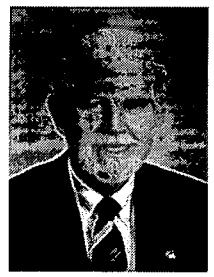
Senator Phil Berger
Vice Chairman



Senator Dan Clodfelter
Vice Chairman



Senator R. C. Soles
Vice Chairman



Senator Charlie Albertson
Member



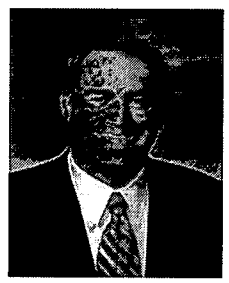
Senator Julia Boseman



Senator Andrew Brock



Senator Harry Brown



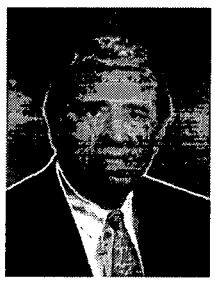
Senator Pete Brunstetter



Senator Janet Cowell



Senator Malcolm Graham



Senator David Hoyle



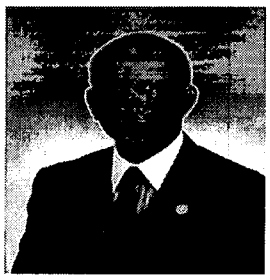
Senator Clark Jenkins



Senator Ellie Kinnaird



Senator Vernon Malone



Senator Floyd McKissick



Senator Tony Rand



Senator Richard Stevens



Senator Jerry Tillman

SENATE JUDICIARY I COMMITTEE
(Civil)

May 10, 2007
9 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Thursday, May 10 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chair Dan Clodfelter, Vice Chair R. C. Soles, Sen. Charlie Albertson, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. David Hoyle, Sen. Clark Jenkins, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Tony Rand, Sen. Richard Stevens and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:07 a.m., saying that the committee had 40 to 50 bills that needed to be handled prior to the May 18 crossover deadline. He then told the committee that there would be extra meetings over the next weeks, including meetings between and after session. Chairman Nesbitt told the committee that it was imperative that member's get their bills heard in committee.

Sen. Rand was then recognized by Chairman Nesbitt regarding Senate Bill 1006, with Senate Bill 1546 following. Chairman Nesbitt said there was a compromise for the bill but told committee members to vote on it as they will. Sen. Rand then thanked the chairman and said the bill was an amendment to current competitive health care information legislation, specifically, what kind of health care information may be released. Senate Bill 1006 would allow public hospitals in the process of purchasing private practices may redact portions of a hospital/practice contract that could lessen the public hospital's competitiveness with private institutions.

Sen. Kinnaird asked where members of the North Carolina Press Association stood. Mark Brack of the NCPA and the North Carolina Broadcasters association was recognized by Chairman Nesbitt and told the committee that both groups he represents are opposed to the bill. Chairman Nesbitt then recognized John Williardson, a Wilkes County attorney who represented the case that triggered Senate Bill 1006. Mr. Williardson told the committee that he represented the Wilkes County local newspaper in a lawsuit against the local hospital that was tried in the North Carolina Court of Appeals. A two to three ruling, and a victory for the Wilkes County newspaper, ruled that information in a contract did not contain competitive health care information. The lawsuit continued to the North Carolina Supreme Count, which ruled in concurrence. Mr. Williardson said that the problem with the amendment was that hospitals would have the sole discretion to decide what is competitive health care information. He also told the committee that there would be no accountability.

Chairman Nesbitt then recognized Sen. Hoyle who said that his bill, Senate Bill 1546, which is connected to Senate Bill 1006, and Sen. Rand's bill were very delicate and would give a balance. He then said that he supported Sen. Rand.

Mr. Brack was then recognized, saying that Sen. Hoyle's bill was more important to the press than Sen. Rand's bill. Chairman Nesbitt then asked Staff Attorney Erika Churchill to explain both bills. Ms. Churchill told the committee that Sen. Rand's bill would allow a hospital to deny access to information including the purchase of a physician's practice. Sen. Hoyle's bill, she then explained, would allow public access to salary compensation of employees of all public entities.

Chairman Nesbitt noted that both bills are in response of two lawsuits tried last year, he also said that the North Carolina Press Association and the North Carolina Hospital Association asked members of the state senate to work through problems contingent of both lawsuit verdicts. Sen. Rand asked Chairman Nesbitt to recognize Hugh Tilson, lobbyist for the Hospital Association. Mr. Tilson said that the association supported the bill and that the association represents both public and private hospitals.

Sen. Hoyle was then recognized by the chair to explain his bill. Sen. Hoyle said his bill was to help define salary, noting that the state gives hospitals "an awful lot of money" and because of that Sen. Hoyle is a "stockholder" in the state's public hospitals. He continued saying that state residents have a right to know the salaries of hospital executives.

Sen. Stevens was recognized by the chair. He said that for retirement accounts, a person makes a choice whether to participate or not, and that what a person does with their income once it becomes theirs should not be public record. Sen. Hoyle said that he did not believe the bill did that. There was discussion to amend the bill to better define public access to deferred compensation information. Ms. Churchill said that drafting the amendment would be difficult because the references to such language were in eight places in the bill. Sen. Rand then motioned for favorable report of both bills. Both received favorable report by unanimous vote.

Sen. Hagan was recognized by the Chair regarding Senate Bill 1117. Chairman Nesbitt told the committee that he wanted to recognize senators not on the committee so those senators would not have to wait through the entire meeting. A Proposed Committee Substitute was distributed to members and adopted for discussion though a motion by Sen. Rand and the unanimous vote of the committee.

Sen. Hagan told the committee that a similar bill did not make it out of both chambers two years ago, and that a bill in the last session dealt with exhibits in both civil and criminal trials. Sen. Hagan's bill today, she told the committee, only has to do with civil trials. The bill gives judges in civil cases the discretion to allow evidence to be shown in jury deliberation rooms. An amendment from Sen. Brunstetter was called for discussion by the chair. The amendment calls to add "in a civil action" inserted one page 1, line 12

of the bill. Sen. Clodfelter asked what reasons were given to not allow the same in criminal trials. Sen. Hagan replied that defense attorney felt that if given in a criminal case the evidence would be prejudicial. Sen. Berger asked if we were creating appeals issues when the committee would not want to. After Sen. Rand agreed with Sen. Berger, an amendment was offered by Sen. Berger amending page 1, lines 22-26, deleting those lines and renumbering the subsections accordingly.

Chairman Nesbitt asked Staff Attorney Hal Pell to explain the current law regarding trial exhibits. Mr. Pell said current law prohibits a judge to give evidence unless both attorneys consent.

Sen. Soles asked if part of a deposition can be sent in if both parties agree, Mr. Pell answered that he felt the law would include any part of a deposition. Sen. Rand commented that any part of a deposition could be sent into a jury deliberation with consent. Chairman Nesbitt called for a vote on the second amendment. The Chairman then recognized Dick Taylor with the North Carolina Academy of Trial Lawyers to speak on the amendment. Mr. Taylor told the committee that he was concerned that the amendment could allow images and evidence that may not be within the context of the case.

Chairman Nesbitt called for a vote of the first amendment offered by Sen. Brunstetter passed with one dissenting vote. The second amendment offered by Sen. Berger passed with unanimous vote. A motion by Sen. Rand to roll the bill into a Proposed Committee Substitute passed unanimously.

The Chair then removed Senate Bill 1131, saying that the legislation would be merged with another bill. Sen. Kinnaird was recognized to speak on Senate Bill 1503, an act abolishing current alienation of affection statues. Sen. Kinnaird told the committee that she had an amendment along with the first edition of the bill. The amendment was a technical amendment to clean up language in the bill. Chairman Nesbitt called for discussion and then the amendment was passed unanimously through a motion by Sen. Kinnaird. Sen. Kinnaird then asked if Doyle Early, a family law specialist from Guilford County to address the committee. Mr. Early said that all parties agree that current statues are archaic, resulting from a time when women were considered property. He then said that current suits resulting from the statutes were fueled by greed and loosely interpreted.

Mr. Early asked the committee to follow the state Court of Appeals in abolishing torts of alienation of affection and criminal conversation. He continued saying he is seeing more torts today than in the past. He explained recent scenarios he had experienced, including a case involving a husband and wife who separated. The husband was an alcoholic and the wife a third-year medical school student. After the marriage ended the former wife had a relationship with another physician. The former husband then threatened to sue the male doctor. He offered a settlement of $500,000. If the two physicians did not agree to the settlement, he would have the former wife's co-workers and children subpoenaed.

Chairman Nesbitt called on Sen. Berger regarding a common law cause for alienation of a parent and "other folks," asking that this bill specifically dealt with the alienation of a spouse. The Chairman then called on Jere Royall with the North Carolina Family Policy Council. Mr. Royall said that just because laws regarding alienation are old does not mean they are antiquated. He continued saying equal numbers of men and women bring about suits. Preserving and protect marriages is important for the legislature, he said.

Sen. Kinnaird told the committee that current statutes are not relevant to the poor and that the statutes are "destructive" and capable of hurting children. Sen. Jenkins moved for favorable report as amended. Discussion continued among members.

Sen. Berger asked what relationships would still be protected. Staff attorney Kara McCraw that all others except those at hand would remain protected. Sen. McKissick said he would support the bill. Sen. Clodfelter then asked Sen. Kinnaird why would the marital contract be exempt without all contracts being exempt. Sen. Clodfelter said that, if so, should ordinary business contacts should be exempt from interference from a third party. Sen. Tillman said he would not support the bill.

The bill was voted for favorable report. Division was called and the bill received unfavorable report by a vote of ten against, eight for.

Chairman Nesbitt recognized Sen. Rand for Senate Bill 743, a technical bill removing ten-year limitations on DWI convictions. Sen. Rand approached the podium and told the committee that three previous convictions in ten years would be extended beyond the limitation. Removing this means that four DWI convictions make the defendant subject to Habitual Drunk Driving punishments. Sen. Jenkins moved for favorable report, the motion passed unanimously.

Sen. Phil Berger was called for Senate Bill 1327, a bill adding exceptions to an existing requirement of returning bail bonds. Senate Bill 1327 would allow a surety to not return the premium of a bond if the defendant fails to disclose information or provides false information regarding current criminal activity or charges; or, provides the surety with incorrect personal information. A Proposed Committee Substitute was passed to members and adopted for discussion through a motion by Sen. Rand and the unanimous vote of the committee.

Chairman Nesbitt called on discussion of the bill. Sen. Berger asked Mr. Mike Mann of the North Carolina Bail Agents' Association. Mr. Mann explained that bail is surrendered when the defendant surrenders within 72 hours. Sen. Brunstetter motioned for favorable report. The motion passed unanimously.

Sen. Rand was recognized for Senate Bill 1480, a bill allowing medical leave for ill and disabled inmates. Sen. Rand moved for adoption of a Proposed Committee Substitute; the motion passed unanimously. Sen. Rand said that bill was trying to do something about

health care costs in our prison system. The bill, he explained, deals with inmates six months within the threshold of death or diagnosed with a terminal illness. A parole board would review the cases and only lower level convicts would be allowed parole.

Chairman Nesbitt called on Staff Attorney Kara McCraw to explain the bill again. Ms. McCraw explained that those eligible for release under the bill were offenders of minor felons with significant health issues.

Following Ms. McGraw's explanation, discussion began among members and Sen. Malone asked who would shoulder the financial burden of care for these inmates after their release. Sen. Rand replied that Medicaid would carry the responsibility and Chairman Nesbitt explained that inmates cannot qualify for Medicaid and their health coverage is completely the burden of the state. Sen. Malone followed up saying that he did not want to create more financial hardship on hospitals.

Sen. Stevens commented that prisoners released from Central Prison would likely be treated at WakeMed, and that five percent of hospital funding came from the county, allowing Wake County to cover medical costs for non-residents. Sen. McKissick asked how many inmates would have been eligible for release through this bill recently. Sen. Rand replied that 200 inmates apply and that the number in the immediate would shrink. Sen. Cowell asked what the fiscal impact to the state would be and where those considered for release are from and their access to medical care. Chairman Nesbitt said that he felt that the inmates were evenly distributed across the state similar to the population.

Jim Mills of Fiscal Research told the committee 203 inmates met criteria of bill. He told the committee that twenty of those inmates cost the state $1.7 million per year and the other inmates cost an average of $87,000 per inmate for outside medical care. Sen. Boseman asked for examples of Class C and D felonies. Sen. Boseman followed asking if there was a change in medical status should they have to return to custody. Chairman Nesbitt said that a medical condition in these situations could improve for the person still isn't well. Sen. Boseman continued saying that there was a problem in her district with a person carrying HIV and infecting unsuspecting persons. She also asked what percentage is released and commits a crime again. Sen. Rand said that those released are terminally ill, geriatric and often disabled and he didn't feel these inmates won't be "running around."

An amendment was offered by Sen. Boseman on page 4, line 10 to replace the word "may" with the word "shall." Sen. Rand said that the bill needed to also be amended on line 12. The amendment was approved for further discussion. Sen. Jenkins motioned for the bill and the amendment to be rolled into a committee substitute and that PCS receive favorable report, unfavorable to the original bill. The motion passed.

The meeting was adjourned at 12:01 p.m.

Copies of Senate Bill 1006, a Bill Analysis for SB 1006, Senate Bill 1546, a Bill Analysis for SB 1546, Senate Bill 1117, a Bill Analysis for SB 1117, a Proposed Committee Substitute for SB 1117, a Bill Analysis for the PCS to SB 1117, the Brunstetter Amendment, the Berger Amendment, Senate Bill 1503, an Amendment to SB 1503, a Bill Analysis for SB 1503, Senate Bill 743, a Bill Analysis for SB 743, Senate Bill 1327, a Proposed Committee Substitute for SB 1327, a Bill Analysis for the PCS for SB 1327, Senate Bill 1480, a Proposed Committee Substitute for SB 1480, a Bill Analysis for SB 1480, and an Amendment to SB 1480 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1006

Short Title: Confidentiality/Competitive Health Care Info. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I (Civil).

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAW PERTAINING TO CONFIDENTIALITY OF COMPETITIVE HEALTH CARE INFORMATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-97.3 reads as rewritten:

"**§ 131E-97.3. Confidentiality of competitive health care information.**

(a) Information relating to competitive health care activities by or on behalf of hospitals and public hospital authorities [hereinafter, competitive health care information] shall be confidential and not a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of a public hospital or public hospital authority, as defined in G.S. 159-39, shall be a public record unless otherwise exempted by law, or the contract contains competitive health care information, the determination of which shall be as provided in subsection (b) of this section.

(b) If a public hospital or public hospital authority is requested to disclose any contract which the hospital or hospital authority believes in good faith contains or constitutes competitive health care information, the hospital or hospital authority may either redact the portions of the contract believed to constitute competitive health care information prior to disclosure, or if the entire contract constitutes competitive health care information, refuse disclosure of the contract. The person requesting disclosure of the contract may institute an action pursuant to G.S. 132-9 to compel disclosure of the contract or any redacted portion thereof. In any action brought under this subsection, the issue for decision by the court shall be whether the contract, or portions of the contract withheld, constitutes competitive health care information, and in making its determination, the court shall be guided by the procedures and standards applicable to protective orders requested under Rule 26(c)(7) of the Rules of Civil Procedure. For the purposes of this section, competitive health care information includes, but is not limited to, contracts entered into by or on behalf of a public hospital or public hospital authority to purchase a medical practice. Before rendering a decision, the court shall review the

contract in camera and hear arguments from the parties. If the court finds that the contract constitutes or contains competitive health care information, the court may either deny disclosure or may make such other appropriate orders as are permitted under Rule 26(c) of the Rules of Civil Procedure.

(c) Nothing in this section shall be deemed to prevent an elected public body, in closed session, which has responsibility for the hospital, the Attorney General, or the State Auditor from having access to this confidential information. The disclosure to any public entity does not affect the confidentiality of the information. Members of the public entity shall have a duty not to further disclose the confidential information."

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

SENATE BILL 1006: Confidentiality/Competitive Health Care Info

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 7, 2007
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1006 would define competitive health care information to include contracts entered into to purchase a medical practice by, or on behalf of, a public hospital or public hospital authority.

[As introduced, this bill was identical to H1836, as introduced by Rep. England, which is currently in House Health.]

CURRENT LAW:

Chapter 132, Public Records, makes all documents of a public entity not specifically excluded a public record. G.S. 143-318.11(a)(1) allows a public body to go into closed session to consider information not considered a public record.

For public health authorities, competitive health care information is confidential and not a public record. However, any contract entered into by, or on behalf of, a public health authority is a public record unless otherwise exempted by law. G.S. 130A-45.11.

For hospitals and public hospital authorities, competitive health care information is confidential and not a public record. However, any contract entered into by, or on behalf of, a public health authority is a public record unless otherwise exempted by law or the contract contains competitive health care information. G.S. 131E-97.3. The financial terms and other competitive health care information directly related to the financial terms in a health services contract between a hospital or a medical school is confidential and not a public record. G.S. 131E-99.

If a hospital or hospital authority is asked to release a contract that contains competitive health information, the hospital or hospital authority may redact the competitive health information prior to release, or the hospital or hospital authority may refuse to release the contract. The person requesting the information may institute an action under Chapter 132 for release of the information. If the court finds that that contract contains competitive health care information, the court may deny disclosure or make other orders as it would for general discovery orders.

BILL ANALYSIS: Senate Bill 1006 would clarify that for purposes of the determination of disclosure upon request for the contract, the term "competitive health information" specifically includes contracts entered into by or behalf of a public hospital or hospital authority to purchase a medical practice.

EFFECTIVE DATE: Effective when it becomes law.

S1006e1-SMST

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1546

Short Title:	Clarify Public Access To Personnel Records.	(Public)
Sponsors:	Senators Hoyle and Dalton.	
Referred to:	Judiciary I (Civil).	

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PUBLIC'S ACCESS TO PUBLIC EMPLOYEE PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-320 reads as rewritten:

"**§ 115C-320. Certain records open to inspection.**

Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its possession, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation. Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 2. G.S. 115D-28 reads as rewritten:

"**§ 115D-28. Certain records open to inspection.**

Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original

employment or appointment, the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its possession, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation. Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 3. G.S. 122C-158(b) reads as rewritten:

"(b) The following information with respect to each employee is a matter of public record: name; age; date of original employment or appointment to the area authority; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation. The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders."

SECTION 4. G.S. 126-23 reads as rewritten:

"**§ 126-23. Certain records to be kept by State agencies open to inspection.**

Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee: name, age, date of original employment or appointment to the State service, the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. For the purposes of this section, the term "salary" includes pay, benefits, incentives,

bonuses, and deferred and all other forms of compensation. Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 5. G.S. 130A-45.9(b) reads as rewritten:

"(b) The following information with respect to each employee of a public health authority is a matter of public record: name; age; date of original employment or appointment; beginning and ending dates, position title, position descriptions, and total compensation of current and former positions; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its possession, and date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public health facility shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists. For the purposes of this subsection, the term "total compensation" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation."

SECTION 6. G.S. 131E-257.2(b) reads as rewritten:

"(b) The following information with respect to each public hospital employee is a matter of public record:

(1) Name.

(2) Age.

(3) Date of original ~~employment.~~employment and the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the hospital has the written contract or a record of the oral contract in its possession.

(4) Current position title, current salary, and the date and amount of the most recent increase or decrease in salary. For the purposes of this subdivision, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation.

(5) Date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification.

(6) The office to which the employee is currently assigned.

In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public hospital shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

The governing board of a public hospital shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the governing board of the public hospital may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 7. G.S. 153A-98(b) reads as rewritten:

"(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation. The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 8. G.S. 160A-168(b) reads as rewritten:

"(b) The following information with respect to each city employee is a matter of public record: name; age; date of original employment or appointment to the service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation. The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 9. G.S. 162A-6.1(b) reads as rewritten:

"(b) The following information with respect to each authority employee is a matter of public record: name; age; date of original employment or appointment to the service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation. The authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

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

SENATE BILL 1546:
Clarify Public Access To Personnel Records

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 7, 2007
Introduced by:	Sen. Hoyle	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1546 would clearly state that the terms of any contract of employment and all salary terms are public record, and may be released from the personnel record of a State or local government employee.

CURRENT LAW:

Personnel records of State and local government employees are confidential and cannot be released, except for certain items in that personnel record. Similar statutes govern the personnel records of:local boards of education, community colleges, area mental health authorities, State employees, public health authorities, public hospitals, counties, cities, and water and sewer authorities.

Generally, the items that may be released from the personnel records are:

- Name
- Age
- Date of original employment or appointment
- Current position
- Title
- Current salary
- Date and amount of most recent increase or decrease in salary
- Date of most recent promotion, demotion, transfer, suspension, separation or other change in position classification
- Office or station to which the employee is currently assigned.

For each licensed medical provider employed by or having privileges with a public health authorities and public hospitals, the following is also public: educational history and qualifications, date and jurisdiction or original and current licensure, and information relating to medical board certifications or other qualification of medical specialists. G.S. 130A-45.9(b); G.S. 131E-257.2(b).

The North Carolina Court of Appeals has interpreted the term "current salary," as it applies to public hospitals and hospital authorities, to not include employment contracts, severance agreements and any other documents that described in whole or part compensation paid to the employee. *Knight Publishing v. Charlotte-Mecklenburg Hospital Authority*, 616 S.E.2nd 602, 2005.

Personnel files of former State employees who have been separated from State employment for 10 years may be open to inspection and examination, except for those items related to demotions and disciplinary actions resulting in the dismissal of the employee. G.S.126-22.

BILL ANALYSIS: Senate Bill 1546 would add to the items that are a matter of public record in personnel file for local boards of education, community colleges, area mental health authorities, State employees, public health authorities, public hospitals, counties, cities, and water and sewer authorities. The additional item is the terms of any employment contract, oral or written, to the extent the employing entity has a record of that contract.

Additionally, Senate Bill 1546 would define the term salary to mean: pay, benefits, incentives, bonuses, and deferred and all other forms of compensation.

EFFECTIVE DATE: Effective when it becomes law.

S1546e1-SMST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1117

Short Title:	Trial Exhibits.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE PRESIDING TRIAL JUDGE IN BOTH CIVIL AND CRIMINAL CASES HAS THE SOLE DISCRETION TO DETERMINE WHETHER JURORS MAY TAKE EXHIBITS INTRODUCED INTO EVIDENCE IN THE JURY ROOM AND THAT THE CONSENT OF ALL PARTIES IS NOT NECESSARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1233 reads as rewritten:

"**§ 15A-1233. Review of testimony; use of evidence by the jury.**

(a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The ~~judge~~ court in ~~his~~ its discretion, after notice to the prosecutor and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. ~~In his discretion the judge~~ The court in its discretion may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) ~~Upon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to conduct any experiments with the exhibit.~~ Upon request by the jury, the court may in its discretion permit the jury to take exhibits that have been received in evidence into the jury room.

(c) The court may refrain from sending certain material to the jury room if the court determines either of the following:

(1) That the material may be subjected to improper use by the jury or unduly prejudicial to any party.

(2) That the material might be dangerous to jurors or to others.

(d) In sending any exhibits to the jury, the court should ensure that the evidentiary integrity of the exhibit is preserved."

SECTION 2. Article 19 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-181.2. Use of evidence by the jury.**

(a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The court in its discretion, after notice to the plaintiff and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. The court in its discretion may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) Upon request by the jury, the court may in its discretion permit the jury to take exhibits that have been received in evidence into the jury room. Depositions may be taken into the jury room upon request of the jury only with consent of the parties.

(c) The court may refrain from sending certain material to the jury room if the court determines either of the following:

(1) That the material may be subjected to improper use by the jury or unduly prejudicial to any party.

(2) That the material might be dangerous to jurors or to others.

(d) In sending any exhibits to the jury, the court should ensure that the evidentiary integrity of the exhibit is preserved."

SECTION 3. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1117
PROPOSED COMMITTEE SUBSTITUTE S1117-CSRK-32 [v.2]

5/8/2007 5:09:31 PM

Short Title: Civil Trial Exhibits. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE PRESIDING TRIAL JUDGE IN CIVIL CASES HAS THE SOLE DISCRETION TO DETERMINE WHETHER JURORS MAY TAKE EXHIBITS INTRODUCED INTO EVIDENCE IN THE JURY ROOM AND THAT THE CONSENT OF ALL PARTIES IS NOT NECESSARY, AND TO PROVIDE THAT DEPOSITIONS MAY ONLY BE TAKEN INTO THE JURY ROOM WITH CONSENT OF THE PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-181.2. Use of evidence by the jury.**

(a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The court in its discretion, after notice to the plaintiff and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. The court in its discretion may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) Upon request by the jury, the court may in its discretion permit the jury to take exhibits that have been received in evidence into the jury room. Depositions may be taken into the jury room upon request of the jury only with consent of the parties.

(c) The court may refrain from sending certain material to the jury room if the court determines either of the following:

(1) That the material may be subjected to improper use by the jury or unduly prejudicial to any party.

(2) That the material might be dangerous to jurors or to others.

(d) In sending any exhibits to the jury, the court should ensure that the evidentiary integrity of the exhibit is preserved."

SECTION 2. This act becomes effective for trials commencing on or after October 1, 2007.

SENATE BILL 1117: Trial Exhibits

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 9, 2007
Introduced by:	Sen. Hagan	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	PCS to First Edition S1117-CSRK		

SUMMARY: ***This act would authorize the trial judge in a civil case to permit the jury to take exhibits into the jury room, upon the jury's request and in the judge's sole discretion. The act is effective for trials commencing on or after October 1, 2007.***

CURRENT LAW: The North Carolina Supreme Court has held that without the consent of the parties, it is error to permit the jury to take evidence into the jury room. The basis for the Court's ruling was, in part, its concern that jurors might make inferences that were contrary to those made in court, and counsel would not have an opportunity to reply to such inferences.

BILL ANALYSIS: This act would enact a new civil procedure statute providing that:

- The trial judge may, upon a deliberating jury's request, direct that parts of testimony be read and evidence reviewed in open court. The court, in its discretion, may also have the jury review other evidence relating to the same factual issue.
- Upon a deliberating jury's request, the court may--in its sole discretion--permit the jury to take exhibits into the jury room. The court may refrain from allowing certain material into the jury room if it may be subjected to improper use, is unduly prejudicial, or might be dangerous to others.
- If the court does send exhibits to the jury, it is required to ensure that the evidentiary integrity of the exhibit is preserved.
- Depositions may only be taken into the jury room with the consent of the parties.

EFFECTIVE DATE: The act is effective for trials commencing on or after October 1, 2007.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment 8**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/10/07

S. B. No. 1117 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) _____

1 moves to amend the bill on page 1, line 12

2 ( ) WHICH CHANGES THE TITLE

3 by inserting after the word "jury"

4 the following:

5 _____

6 "in a civil action".

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment 9

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/10/07

S. B. No. 1117 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Berger
Sen.)

moves to amend the bill on page 1, line 5 22-26

( ) WHICH CHANGES THE TITLE

by deleting those lines and renumbering the subsections accordingly.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1503

Short Title:	Abolish Alienation of Affection/Crim. Conv.	(Public)
Sponsors:	Senators Kinnaird; Bingham, Hagan, Nesbitt, and Weinstein.	
Referred to:	Judiciary I (Civil).	

March 27, 2007

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52 of the General Statutes is amended by adding two new sections to read:

"**§ 52-13. Abolition of alienation of affection cause of action.**

The common-law cause of action for alienation of affection of a spouse is abolished.

"**§ 52-14. Abolition of criminal conversation cause of action.**

The common-law cause of action for criminal conversation is abolished."

SECTION 2. This act is effective when it becomes law and applies to actions filed on or after that date. This act does not affect cases pending when the act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1503

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

S1503-ATC-11 [v.1]

Date _____,2007

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

Senator Kinnaird

moves to amend the bill on page 1, lines 10-11 by inserting the following between those lines:

"**SECTION 1.1.** G.S. 1-52(5) reads as rewritten:

'(5) For ~~criminal conversation, or for~~ any ~~other~~ injury to the person or rights of another, not arising on contract and not hereafter enumerated.'

SECTION 1.2. G.S. 6-18(3) reads as rewritten:

'(3) In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, ~~criminal conversation~~ or seduction, if the plaintiff recovers less than fifty dollars ($50.00) damages, he shall recover no more costs than damages.'

SECTION 1.3. G.S. 8-50(a) reads as rewritten:

'(a) On the trial of any issue, or of any matter or question, or on any inquiry arising in any action, suit or other proceeding in court, or before any judge, justice, jury or other person having, by law, authority to hear and examine evidence, the parties themselves and the person in whose behalf any suit or other proceeding may be brought or defended, shall, except as otherwise provided, be competent and compellable to give evidence, either viva voce or by deposition, according to the practice of the court, in behalf of either or any of the parties to said action, suit or other proceeding. Nothing in

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1503

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

S1503-ATC-11 [v.1]

this section shall be construed to apply to any action or other proceeding in any court instituted in consequence of ~~adultery, or to any action for criminal conversation.~~adultery.'.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1503

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

S1503-ATC-11 [v.1]

Date _____,2007

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

Senator Kinnaird

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SECTION 1.3. G.S. 8-50(a) reads as rewritten:

'(a) On the trial of any issue, or of any matter or question, or on any inquiry arising in any action, suit or other proceeding in court, or before any judge, justice, jury or other person having, by law, authority to hear and examine evidence, the parties themselves and the person in whose behalf any suit or other proceeding may be brought or defended, shall, except as otherwise provided, be competent and compellable to give evidence, either viva voce or by deposition, according to the practice of the court, in behalf of either or any of the parties to said action, suit or other proceeding. Nothing in

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1503

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

S1503-ATC-11 [v.1]

this section shall be construed to apply to any action or other proceeding in any court instituted in consequence of ~~adultery, or to any action for criminal conversation.~~adultery.'.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 1503:
Abolish Alienation of Affection/Crim. Conv

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 10, 2007
Introduced by:	Sen. Kinnaird	**Summary by:**	Kara McCraw
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1503 would abolish the common law causes of action for alienation of affection and criminal conversation.

CURRENT LAW:

Alienation of Affection

A common law cause of action for alienation of affections is recognized in North Carolina. Cannon v. Miller, 313 N.C. 324 (1985). The action is comprised of wrongful acts which deprive a married person of the affections of their spouse, including love, society, companionship, and comfort. To sustain a common law cause of action for alienation of affection, a plaintiff must show:

- That the plaintiff and the plaintiff's spouse were happily married and that a genuine love and affection existed between them,
- That the love and affection so existing was alienated and destroyed, and
- That the wrongful and malicious acts of the defendant produced and brought about the loss and alienation of such love and affection.

An action for alienation of affection does not require the physical separation of the parties or an act of adultery, and may be brought against parents or close relatives of the spouses. Cannon v. Miller, 71 N.C.App. 460 (1984). The measure of damages for alienation of affection is the present value in money of the support, consortium, and other legally protected marital interests lost by the plaintiff through the defendant's wrong. In addition the plaintiff may recover for the wrong and injury done to the plaintiff's health, feelings, or reputation. Hutelmyer v. Cox, 133 N.C.App. 364 (1999). Punitive damages may be awarded when there is evidence of circumstances of aggravation in addition to the malice implied by law from the conduct of defendant in alienating the affections between the spouses which was necessary to sustain a recovery of compensatory damages. Chappell v. Redding, 67 N.C.App. 397 (1984).

Criminal Conversation

A common law action for criminal conversation is recognized in North Carolina. Cannon v. Miller, 313 N.C. 324 (1985). Criminal conversation is synonymous with adultery. To sustain a cause of action for criminal conversation, a plaintiff must show:

- The actual marriage between the spouses, and
- Sexual intercourse between defendant and plaintiff's spouse during coverture.

Alienation of affection is not a necessary element of criminal conversation. The mere fact of separation does not bar an action for criminal conversation occurring during the separation. Cannon v. Miller, 71 N.C.App. 460 (1984). Damages for criminal conversation may consider the loss of consortium, mental anguish, humiliation, injury to health, and loss of support. Hutelmyer v. Cox, 133 N.C.App. 364 (1999). The same sexual misconduct necessary to establish the tort of criminal conversation may also sustain an award of punitive damages. Horner v. Byrnett, 132 N.C. App. 323 (1999).

A valid separation agreement between the spouses will not necessarily bar actions for alienation of affection or criminal conversation which occurred prior to separation. The consent of the participating spouse is not a recognized defense to either action.

BILL ANALYSIS: Senate Bill 1503 would create the following two new sections in the General Statutes.

- Abolishing the common law cause of action for alienation of affection of a spouse.
- Abolishing the common law cause of action for criminal conversation.

EFFECTIVE DATE: This bill would become effective when it becomes law and would apply to actions filed on or after that date. The bill would not apply to cases pending at the time the act becomes law.

BACKGROUND: In Cannon v. Miller, 71 N.C. App. 460 (1985), the N.C. Court of Appeals abolished the common law causes of action for alienation of affection and criminal conversation. This decision was vacated by the North Carolina Supreme Court. Cannon v. Miller, 313 N.C. 324 (1985). Recently, the NC Supreme Court addressed the statute of limitations for criminal conversation actions, holding that the three year statute of limitations for criminal conversation begins to run when the tort is discovered or should have been discovered, not upon completion of the last act constituting the offense. Misenheimer v. Burris, 360 N.C. 620 (2006).

Forty-three states have abolished alienation of affection and criminal conversation. Seven states, North Carolina, Hawaii, Illinois, Mississippi, New Mexico, South Dakota, and Utah, still retain these torts.

S1503e1-SMTC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 743

Short Title:	Remove Ten-Year Limitation on DWI Conviction.	(Public)
Sponsors:	Senators Rand; Apodaca, Brock, and Jones.	
Referred to:	Judiciary I (Civil).	

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE TEN-YEAR TIME PERIOD ALLOWED TO LOOK BACK INTO A DRIVER'S HISTORY TO DETERMINE IF THE DEFENDANT IS A HABITUAL IMPAIRED DRIVING OFFENDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-138.5(a) reads as rewritten:

"**§ 20-138.5. Habitual impaired driving.**

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in ~~G.S. 20-4.01(24a) within 10 years of the date of this offense.~~ G.S. 20-4.01(24a).

..."

SECTION 2. This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 743:
Remove Ten-Year Limitation on DWI Conviction

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 9, 2007
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	First Edition		Committee Co-Counsel

SUMMARY: This act would remove the ten-year "look back period" from a fourth DWI to determine if the offender has violated the habitual impaired driving statute. The act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

CURRENT LAW: A person who has a fourth impaired driving offense, with three impaired driving offenses within the previous ten years of the current offense, is guilty of habitual impaired driving.

- The offense is a Class F felony, with a mandatory minimum active sentence of 12 months, which may not be suspended.
- The motor vehicle driven by the defendant at the time of the offense is subject to forfeiture.
- The statute includes provisions that would give an owner or holder of a security interest the status of "an innocent party," and would preclude forfeiture.

BILL ANALYSIS: This act removes the ten-year look back period from the current impaired driving offense from the habitual impaired driving statute. Consequently, a driver who has three previous impaired driving offenses would commit a violation of the law upon a fourth impaired driving offense.

EFFECTIVE DATE: This act becomes effective October 1, 2007, and applies to offense occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1327

Short Title:	Bail Bond/Exception/Return of Bond Premium.	(Public)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD AN EXCEPTION TO THE CIRCUMSTANCES UNDER WHICH A SURETY ON A BAIL BOND IS NOT REQUIRED TO RETURN THE PREMIUM ON THE BOND UNDER THE LAWS REGULATING BAIL BONDSMEN AND RUNNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-20 is amended by adding a new subdivision to read:

"**§ 58-71-20. Surrender of defendant by surety; when premium need not be returned.**

At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded; in such case the full premium shall be returned within 72 hours after the surrender. The defendant may be surrendered without the return of premium for the bond if the defendant does any of the following:

...

(6) Fails to disclose criminal activity, charges, or convictions or provides false information regarding any past or current criminal activity, charges, or convictions."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1327
PROPOSED COMMITTEE SUBSTITUTE S1327-CSTC-28 [v.1]

5/9/2007 7:26:45 PM

Short Title: Bail Bond/Exception/Return of Bond Premium. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD AN EXCEPTION TO THE CIRCUMSTANCES UNDER WHICH A SURETY ON A BAIL BOND IS NOT REQUIRED TO RETURN THE PREMIUM ON THE BOND UNDER THE LAWS REGULATING BAIL BONDSMEN AND RUNNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-20 is amended by adding a new subdivision to read:

"**§ 58-71-20. Surrender of defendant by surety; when premium need not be returned.**

At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded; in such case the full premium shall be returned within 72 hours after the surrender. The defendant may be surrendered without the return of premium for the bond if the defendant does any of the following:

...

(6) Fails to disclose information or provides false information regarding any past or current criminal activity, charges, or convictions.

(7) Provides the surety with incorrect personal identification."

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

SENATE BILL 1327:
Bail Bond/Exception/Return of Bond Premium

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 10, 2007
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S1327-CSTC-28[v.1]		Committee Counsel

SUMMARY: Senate Bill 1327 would add 2 additional exceptions to the requirement that a surety return the bond premium, due to the following actions of the defendant:

- ***Failure to disclose or falsification of past criminal activity, charges, or convictions.***
- ***Providing incorrect personal information.***

The PCS added the additional exception regarding false information.

CURRENT LAW: G.S. 58-71-20 provides that, at any time before there is a breach of the undertaking in any type of bail or fine and cash bond, the surety may surrender the defendant to the sheriff, and must return the full premium within 72 hours of the surrender.

The premium for the bond does not have to be returned when the defendant is surrendered if the defendant does any of the following:

- Willfully fails to pay the premium to the surety, or willfully fails to make a premium payment under an agreement as specified in G.S. 58-71-167 (Portion of bond premium payments deferred).
- Changes addresses without notifying the surety before the address change.
- Physically hides from the surety.
- Leaves the State without the surety's permission.
- Violates any order of the court.

BILL ANALYSIS: Senate Bill 1327 would add two new exceptions to the requirement that the premium be returned within 72 hours of the defendant's surrender. The surety would not be required to return the premium if the defendant:

- Fails to disclose information or provides false information regarding any past or current criminal activity, charges, or convictions.
- Provides the surety with incorrect personal identification.

EFFECTIVE DATE: This act would become effective when it becomes law.

S1327e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1480

Short Title:	Medical Release for Ill and Disabled Inmates.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION AND THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO PROVIDE FOR MEDICAL RELEASE OF NO-RISK INMATES WHO ARE EITHER PERMANENTLY AND TOTALLY DISABLED, TERMINALLY ILL, OR GERIATRIC.

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 84B.

"Medical Release of Inmates.

"**§ 15A-1369. Definitions.**

For purposes of this Article, the term:

(1) "Commission" means the Post-Release Supervision and Parole Commission.

(2) "Department" means the Department of Correction.

(3) "Geriatric" describes an inmate who is 65 years of age or older and suffers from chronic infirmity, illness, or disease related to aging that did not exist at the time of sentencing and makes it highly unlikely that the inmate poses a significant public safety risk.

(4) "Inmate" means any person sentenced to the custody of the Department of Correction.

(5) "Medical release" means a program enabling the Commission to release no-risk inmates who are either permanently and totally disabled or terminally ill.

(6) "Permanently and totally disabled" describes an inmate other than an inmate convicted of a capital felony or a Class A, B1, or B2 felony who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing

physical or medical condition that was unknown at the time of sentencing and was not diagnosed upon entry to prison and that is so incapacitating that it is highly unlikely that the inmate poses a significant public safety risk.

(7) "Terminally ill" describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing and was not diagnosed upon entry to prison, that will likely produce death within six months, and that is so debilitating that it is highly unlikely that the inmate poses a significant public safety risk.

"§ 15A-1369.1. Authority to release.

The Commission shall establish a medical release program to be administered by the Department. The Commission shall prescribe when and under what conditions an inmate may be released for medical release, consistent with the provisions of G.S. 15A-1369.4. The Commission may adopt rules to implement the medical release program.

"§ 15A-1369.2. Eligibility.

(a) Except as otherwise provided in this section, notwithstanding any other provision of law, an inmate is eligible to be considered for medical release if the inmate is:

(1) Diagnosed as permanently and totally disabled, terminally ill, or geriatric under the procedure described in G.S. 15A-1369.3(b)(1); and

(2) Assessed by the Department to pose no risk to society, as described in G.S. 15A-1369.3(b)(2).

(b) Persons convicted of a capital felony or a Class A, B1, or B2 felony and persons convicted of an offense that requires registration under Chapter 27A of the General Statutes shall not be eligible for release as permanently and totally disabled or geriatric under this Article.

"§ 15A-1369.3. Procedure for medical release.

(a) The Commission shall consider an inmate for medical release upon referral by the Department. The Department may base its referral upon either a request or petition for release filed by the inmate, the inmate's attorney, or the inmate's next of kin or upon a recommendation from within the Department.

(b) The criteria for referral shall include an assessment of the inmate's medical condition and the risk the inmate poses to society, as follows:

(1) Both the Department medical director, or a designee of the director who is a licensed physician, and an independent licensed physician approved by the Department shall review the case of each inmate who has applied for or has been recommended for medical release. Any physician who examines an inmate being considered for medical release shall prepare a written diagnosis that includes:

a. A description of any and all terminal conditions, physical incapacities, and chronic conditions; and

b. A prognosis concerning the likelihood of recovery from any and all terminal conditions, physical incapacities, and chronic conditions.

(2) The Department shall make an assessment of the risk for violence and recidivism that the inmate poses to society. In order to make this assessment, the Department may consider such factors as the inmate's medical condition, the severity of the offense for which the inmate is incarcerated, the inmate's prison record, and the release plan. The Department shall also provide the victim or victims of the inmate or the victims' family or families with an opportunity to be heard.

(c) If the inmate meets the criteria for release, the Department shall forward its referral and medical release plan for the inmate to the Commission. The Department shall complete the risk assessment and forward its referral and medical release plan within 30 days of receiving a request, petition, or recommendation for release of a terminally ill inmate and within 30 days of receiving a request, petition, or recommendation for release of a permanently and totally disabled inmate or a geriatric inmate.

(d) The Commission shall make a determination of whether to grant medical release within 15 days of receiving a referral from the Department for release of a terminally ill inmate and within 20 days of receiving a referral from the Department for release of a permanently and totally disabled inmate or a geriatric inmate.

(e) A denial of medical release by the Commission shall not affect an inmate's eligibility for any other form of parole or release under applicable law.

(f) If the Department determines that an inmate should not be considered for release under this Article or the Commission denies medical release under this Article, the inmate may not reapply or be reconsidered unless there is a demonstrated change in the inmate's medical condition.

"**§ 15A-1369.4. Conditions of medical release.**

(a) The Commission may set reasonable conditions upon an inmate's medical release that shall apply for any length of time determined by the Commission through the date upon which the inmate's sentence would have expired. These conditions may include:

(1) That the released inmate may be placed in a hospital, hospice, or other institution as specified by the Commission; and

(2) That the Department shall receive periodic assessments from the inmate's treating physician.

Inmates who are granted medical release are subject to supervision by the Division of Community Corrections and any conditions set by the Commission.

(b) The Commission shall revoke an inmate's medical release if the Commission determines that an inmate has failed to comply with any reasonable condition set upon the inmate's release. If the Commission revokes an inmate's medical release, the inmate shall be returned to the custody of the Department and shall resume serving the balance of the sentence with credit given only for the duration of the inmate's medical release served in compliance with all reasonable conditions set forth pursuant to subsection (a)

of this section. Revocation of an inmate's medical release for violating a condition of release shall not preclude an inmate's eligibility for any other form of parole or release provided by law but may be used as a factor in determining eligibility for that parole or release.

"**§ 15A-1369.5. Change in medical status.**

(a) If a periodic diagnosis reveals that an inmate released on medical release has improved so that the inmate would not be eligible for medical release if being considered at that time, the Commission may order the inmate returned to the custody of the Department to await a revocation hearing. In determining whether to revoke medical release, the Commission may consider the most recent periodic diagnosis of the inmate and a risk assessment of the inmate conducted pursuant to G.S. 15A-1369.3(b)(2). If the Commission revokes the inmate's medical release, the inmate shall resume serving the balance of the sentence with credit given for the duration of the medical release.

(b) Revocation of an inmate's medical release due to a change in the inmate's medical condition shall not preclude an inmate's eligibility for medical release in the future or for any other form of parole or release provided by law."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1480
PROPOSED COMMITTEE SUBSTITUTE S1480-CSTC-23 [v.7]

5/7/2007 10:58:00 PM

Short Title: Medical Release for Ill and Disabled Inmates. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION AND THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO PROVIDE FOR MEDICAL RELEASE OF NO-RISK INMATES WHO ARE EITHER PERMANENTLY AND TOTALLY DISABLED, TERMINALLY ILL, OR GERIATRIC.

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 84B.

"Medical Release of Inmates.

"**§ 15A-1369. Definitions.**

For purposes of this Article, the term:

(1) "Commission" means the Post-Release Supervision and Parole Commission.

(2) "Department" means the Department of Correction.

(3) "Geriatric" describes an inmate who is 65 years of age or older and suffers from chronic infirmity, illness, or disease related to aging that either did not exist at the time of sentencing or since the time of sentencing has progressed to render the inmate permanently and totally disabled or terminally ill, such that the inmate is incapacitated to the extent that the inmate does not pose a public safety risk.

(4) "Inmate" means any person sentenced to the custody of the Department of Correction.

(5) "Medical release" means a program enabling the Commission to release inmates who are permanently and totally disabled, terminally ill, or geriatric.

(6) "Medical Release Plan" means a comprehensive written medical care plan that is specific to the inmate and includes, at a minimum, the proposed course of treatment, the proposed site for treatment and post-treatment care, and the financial program in place to cover the cost of this plan for the duration of the medical release.

(7) "Permanently and totally disabled" describes an inmate who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was unknown at the time of sentencing or since the time of sentencing has progressed to render the inmate permanently and totally disabled, such that the inmate does not pose a public safety risk.

(8) "Terminally ill" describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or since the time of sentencing has progressed to render the inmate terminally ill, and that will likely produce death within six months, and that is so debilitating such that the inmate does not pose a public safety risk.

"**§ 15A-1369.1. Authority to release.**

The Commission shall establish a medical release program to be administered by the Department. The Commission shall prescribe when and under what conditions an inmate may be released for medical release, consistent with the provisions of G.S. 15A-1369.4. The Commission may adopt rules to implement the medical release program.

"**§ 15A-1369.2. Eligibility.**

(a) Except as otherwise provided in this section, notwithstanding any other provision of law, an inmate is eligible to be considered for medical release if the Department determines that the inmate is:

(1) Diagnosed as permanently and totally disabled, terminally ill, or geriatric under the procedure described in G.S. 15A-1369.3(b)(1); and

(2) Incapacitated to the extent that the inmate does not pose a public safety risk.

(b) Persons convicted of a capital felony or a Class A, B1, or B2 felony and persons convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes shall not be eligible for release under this Article.

"**§ 15A-1369.3. Procedure for medical release.**

(a) The Commission shall consider an inmate for medical release upon referral by the Department. The Department may base its referral upon either a request or petition for release filed by the inmate, the inmate's attorney, or the inmate's next of kin or upon a recommendation from within the Department.

(b) The referral shall include an assessment of the inmate's medical condition and the risk the inmate poses to society, as follows:

(1) The Department medical director, or a designee of the director who is a licensed physician, shall review the case of each inmate who meets

the eligibility requirements for medical release set forth in § 15A-1369.2. Any physician who examines an inmate being considered for medical release shall prepare a written diagnosis that includes:

a. A description of any and all terminal conditions, physical incapacities, and chronic conditions; and

b. A prognosis concerning the likelihood of recovery from any and all terminal conditions, physical incapacities, and chronic conditions.

(2) The Department shall make an assessment of the risk for violence and recidivism that the inmate poses to society. In order to make this assessment, the Department may consider such factors as the inmate's medical condition, the severity of the offense for which the inmate is incarcerated, the inmate's prison record, and the release plan.

(c) If the Department determines that the inmate meets the criteria for release, the Department shall forward its referral and medical release plan for the inmate to the Commission. The Department shall complete the risk assessment and forward its referral and medical release plan within 45 days of receiving a request, petition, or recommendation for release.

(d) The Commission shall make a determination of whether to grant medical release within 15 days of receiving a referral from the Department for release of a terminally ill inmate and within 20 days of receiving a referral from the Department for release of a permanently and totally disabled inmate or a geriatric inmate. In making the determination, the Commission shall make an independent assessment of the risk for violence and recidivism that the inmate poses to society. The Commission also shall provide the victim or victims of the inmate or the victims' family or families with an opportunity to be heard.

(e) A denial of medical release by the Commission shall not affect an inmate's eligibility for any other form of parole or release under applicable law.

(f) If the Department determines that an inmate should not be considered for release under this Article or the Commission denies medical release under this Article, the inmate may not reapply or be reconsidered unless there is a demonstrated change in the inmate's medical condition.

"**§ 15A-1369.4. Conditions of medical release.**

(a) The Commission may set reasonable conditions upon an inmate's medical release that shall apply for any length of time determined by the Commission through the date upon which the inmate's sentence would have expired. These conditions may include:

(1) That the released inmate's care be consistent with the care specified in the Medical Care Plan as approved by the Commission; and

(2) That the Department shall receive periodic assessments from the inmate's treating physician.

Inmates who are granted medical release are subject to supervision by the Division of Community Corrections and any conditions set by the Commission.

(b) The Commission shall revoke an inmate's medical release if the Commission determines that an inmate has failed to comply with any reasonable condition set upon the inmate's release. If the Commission revokes an inmate's medical release, the inmate shall be returned to the custody of the Department and shall resume serving the balance of the sentence with credit given only for the duration of the inmate's medical release served in compliance with all reasonable conditions set forth pursuant to subsection (a) of this section. Revocation of an inmate's medical release for violating a condition of release shall not preclude an inmate's eligibility for any other form of parole or release provided by law but may be used as a factor in determining eligibility for that parole or release.

"**§ 15A-1369.5. Change in medical status.**

(a) If a periodic medical assessment reveals that an inmate released on medical release has improved so that the inmate would not be eligible for medical release if being considered at that time, the Commission may order the inmate returned to the custody of the Department to await a revocation hearing. In determining whether to revoke medical release, the Commission may consider the most recent medical assessment of the inmate and a risk assessment of the inmate conducted pursuant to G.S. 15A-1369.3(b)(2). If the Commission revokes the inmate's medical release, the inmate shall resume serving the balance of the sentence with credit given for the duration of the medical release.

(b) Revocation of an inmate's medical release due to a change in the inmate's medical condition shall not preclude an inmate's eligibility for medical release in the future or for any other form of parole or release provided by law."

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

SENATE BILL 1480:
Medical Release for Ill and Disabled Inmates

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 8, 2007
Introduced by:	Sen. Rand	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S1480-CSTC		Committee Counsel

SUMMARY: ***Senate Bill 1480 would create a new article to provide for medical release of inmates who meet certain criteria, are either geriatric, permanently and totally disabled, or terminally ill, and who do not pose a public safety risk.***

CURRENT LAW: The General Statutes do not currently provide for medical release of inmates.

BILL ANALYSIS: Senate Bill 1480 would create a new article in Chapter 15A to provide for medical release of inmates.

Key definitions

- ***Geriatric:*** An inmate 65 or older who is 1) suffering from a chronic infirmity, illness, or aging related disease that either did not exist at the time of sentencing or progressed to render the inmate permanently disabled or terminally ill, 2) which has rendered the inmate incapacitated to the point the inmate is not a public safety risk.
- ***Medical Release Plan:*** A comprehensive written medical care plan specific to the inmate which includes a proposed: 1) course of treatment, 2) site for treatment and post-treatment care, and 3) financial program to cover costs for duration of medical release.
- ***Permanently and totally disabled:*** An inmate who is determined by a licensed physician to be 1) suffering from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was either unknown at sentencing or progressed to render the inmate permanently disabled, 2) so that the inmate is not a public safety risk.
- ***Terminally Ill***: An inmate who is determined by a licensed physician to 1) have an incurable condition caused by illness or disease that was either unknown at sentencing or progressed to render the inmate terminally ill, 2) will likely produce death within 6 months, and 3) is so debilitating that the inmate is not a public safety risk.

Authority: The Post-Release Supervision and Parole Commission (Commission) shall establish a medical release program to be administered by the Department of Corrections (Department).

Eligibility: Inmates that are 1) diagnosed as permanently and totally disabled, terminally ill, or geriatric, and 2) who are incapacitated to the extent they do not pose a public safety threat are eligible for consideration of medical release, subject to the following exceptions:

- Those convicted of a capital felony, a Class A, B1 or B2 felony, or an offense requiring registration under Article 27A of Chapter 14 (Sex Offender and Public Protection Registration Programs) are not eligible for medical release.

Procedure

- **Referral:** Inmates may be considered for medical release upon referrals by the Department to the Commission. The referral may be based on a request of petition from 1) the inmate, 2) the inmate's attorney, 3) the inmate's next of kin, or 4) a Department internal recommendation.

- **Risk Assessment:** Referrals must include a risk assessment of 1) the inmate's medical condition as reviewed by the Department medical director or designee, 2) the risk the inmate poses to society as determined by the Department. The risk assessment must be completed within 45 days of the request.
- **Commission's Determination:** If the Department determines the inmate meets the release criteria, the referral and medical release plan are forwarded to the Commission. The Commission must 1) make an independent risk assessment and 2) provide victims and the family of victims the opportunity to be heard. The Commission must determine if medical release is to be granted with 15 days for a terminally ill patient, and 20 days for a permanently disabled or geriatric patient.
- **Denials:** Denial of medical release shall not affect an inmate's eligibility for other forms of parole or release. If an inmate is denied medical release or if the Department determines the inmate should not be considered, the inmate may not reapply or be reconsidered unless there is a demonstrated change in medical condition.

Conditions of Release

- **Conditions:** The Commission may set reasonable conditions on medical release that may apply through the date the inmate's sentence would have expired, including that care be consistent with the care specified in the Medical Care Plan, and that the Department receive periodic assessments from the treating physician.
- **Supervision:** Inmates granted medical release are subject to supervision by the Division of Community Corrections.
- **Revocations:** The Commission may revoke the inmate's medical release if the inmate fails to comply with the reasonable conditions set upon the inmate's release. If the medical release is revoked, the inmate is returned to the Department's custody and resumes serving the balance of the inmate's sentence, with credit for the duration of the medical release served in compliance with the reasonable conditions. Revocation of medical release for violating a reasonable condition shall not preclude eligibility for other forms or release or parole provided by law, but may be used as a factor in such determinations.

Change in Medical Status

- If a periodic assessment shows that an inmate on medical release has improved so that the inmate would not be eligible for medical release if considered at that time, the Commission may order the inmate returned to the Department's custody for a revocation hearing, where the Commission will consider the most recent medical assessment and a risk assessment of the inmate. If the inmate's medical release is revoked due to change in medical status, the inmate will resume serving the sentence with credit for the time on medical release.
- Revocation of medical releases due to a change in status will not preclude eligibility for medical release in the future or other forms of parole or release.

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

S1480e1-SMTC-CSTC

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment 22**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1480 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Boseman

moves to amend the bill on page 4, line 10

( ) WHICH CHANGES THE TITLE

by replacing the word "may" with the word "shall."

and on page 4, line 12 by replacing the word "may" with the word "shall".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 9:00 – 11:00 p.m. May 10, 2007
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Perry Griffin	Daily Bulletin
Cassandra White	Gov. Office
G. Dewey Hudson	DA - 4th
Andy Romont	NCLM
Jim Blackburn	NC Association of County Commissioners
Patrick Buffkin	Nelson Mullins
Hugh Tilson	NCHA
Rick Zechini	NC Ass. of Realtors
Patsy R. Jenner	Parole Commission - Yorkes Rd.
Gary Salamido	GSK
Dana Sposa	SCA
Christa Cox	Wake Med

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 9:00 – 11:00 p.m. May 10, 2007

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles L Mosley	Parole Commission
Tracy Little	Dept. of Correction
Bo Heath	McGuire Woods Consulting
Laura Parker	Conference of DAs
Peg Dorer	Conference of DAs
Kimberly N Overton	Conference of DAs
Amber Lucken Barwick	Conference of DAs
Jeff Royall	NC Family Policy Council
Ed Parker	Crumpler, Freedman, Parker & Wyatt Law Firm - Cary, NC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 9:00 – 11:00 p.m. May 10, 2007

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN WILLARDSON	WILLARDSON, LIPSCOMB & MILLER, LLP 206 E. MAIN ST. WILKESBORO, NC 28697
JOHN BUSSIAN	BUSSIAN LAW FIRM
MARK IRAK	BROOKS PIERCE
Cam Cowan	BPMHL
Ann Barnes	Healthcare
Frank Barnes	" "
[illegible]	NCBA
Sam Currin	D.A.'s Conf.
Tom Horner	DA's Conf.
Tom Keith	DA - Forsyth Co
Ron Moore	Dist. Atty Buncombe Co.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 9:00 – 11:00 p.m. — May 10, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Taylor	NCAJ
Doyle Early	NC Bar
Joanne Stevens	Stevens & Assoc.
Elizabeth Dalton	Ingersoll
John Rees	NCFPC
Doug Heron	NC Bar Association
John Goodman	NC Chamber
Jess MacDonald	Jon Bacon
Will Fassbender	
Ralph Walker	NAO
Jamal Jones	NCHA

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 9:00 – 11:00 p.m. May 10, 2007

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard O'Brien	PFPNC
David Audley	PFPNC
David McGowan	NC Realtors
Dianna Jessup	NCUC Public Staff
Paul Wilms	
Lisa Martin	NCHBA
Alastair Mercer	
[illegible]	WCPSS
Katherine Joyce	NCASA
Todd Barlow	NCATL
[illegible]	NC Justice

Derion

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 9:00-11:00 am May 10, 2007

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McCoy	Brooks
Amy McCarley	Smith Anderson
Tye Hunter	IDS
Tim Mark	NCDOC-DCC
Ieu Joyner	NCCU School of Law
Lao Roberts	CYR

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Thursday, May 10, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **743** Remove Ten-Year Limitation on DWI Conviction.
Sequential Referral: None
Recommended Referral: None

S.B. **1006** Confidentiality/Competitive Health Care Info.
Sequential Referral: None
Recommended Referral: None

S.B. **1546** Clarify Public Access To Personnel Records.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comments:

SENATE JUDICIARY I COMMITTEE
(Civil)

May 15, 2007
8:00 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Tuesday, May 15, 2007 in Room 1027 of the Legislative Building. A quorum was present.

Senator Nesbitt called the meeting to order and recognized Senator Cowell to speak on Senate Bill 969 (Statute of Repose/Products Liability Actions). A proposed committee substitute was distributed to the members and Senator Rand moved for its adoption for consideration. The motion passed.

Senator Cowell said the bill had to do with product liability actions and she told the committee that she had agreed to file this bill because of a personal experience with a family member who had lost his ability to walk as a result of a defective seatbelt in an SUV. He was able to bring suit against the manufacturer and received a settlement that would allow him to live with his disability.

Senator Cowell said North Carolina consumers have less protection than any state in the country and she referred to a handout that showed states with a Statute of Repose and states with no Statute of Repose. She pointed out that 39 states have no Statute of Repose. This handout is attached to these Minutes.

Senator Cowell said there were two women, one present today, who were injured in similar accidents: Jennifer Mitchell and Elaine Gorski. Both are now in wheelchairs. Jennifer's car was 3 years old so she was allowed to bring suit and received a settlement for her injuries so that she could maintain her. However, Elaine's car was 6 years and 4 months old, so there was no settlement for her due to North Carolina's Statute of Repose.

Next, Senator Nesbitt recognized Jerome (Jay) Trehy, a Raleigh attorney dealing with products liability on behalf of consumers. He told the committee that Jennifer Mitchell was able to acquire a custom built home suitable for her needs, while Elaine Gorski received no settlement to allow her to maintain her life with the injuries she sustained. He added that, if Elaine had been in another state she could have had justice. He said the Statute of Repose only protects insurance companies.

When he had concluded his remarks, Elaine Gorski's husband, Jeff, was recognized and relayed his feeling about how his wife had received no justice in North Carolina.

Leah Lawler with GlaxoSmithKline, Mark Behrens, a Washington DC attorney, Gary Parson, a Raleigh lawyer, all spoke against the bill.

Former State Representative Wayne Goodwin who is now the Assistant Commissioner of Insurance told the Committee that the SB 969 needs to be ratified because of other legislation making way through the Legislature. He distributed a letter from Insurance Commissioner Jim Long which supported the legislation.

Discussion followed. Senator Tillman thought it would be helpful to know what other countries' statutes of repose are. Senator Brown said business owners needed to know that there was a limit on the amount of time to bring suit against a manufacturer so they could plan for the future.

Senator Nesbitt told the committee that while automobiles are manufactured in Michigan, that state has no State of Repose.

Senator McKissick was recognized and moved to give the Proposed Committee Substitute for SB 969 a favorable report, unfavorable to original. The bill was displaced.

Senator John Snow was recognized for SB 1290 (Alcohol monitoring Systems for DWI Offenders.) A new Proposed Committee Substitute was distributed to the members and Senator Albertson moved that it be adopted for consideration.

Senator Snow told the committee that this bill in a previous meeting. He said that the new PCS amends the law in the areas of Level I and Level II punishments and says that a judge may impose any other lawful condition of probation, such as abstinence from alcohol consumption to be verified by continuous alcohol monitoring.

Hal Pell, Committee Staff, was recognized to speak on the bill. He said the bill allows the DMV to issue a conditional license to a person who is subject to permanent revocation period after 12 months if:

- The driver has not consumed alcohol for 12 months while being monitored by continuous alcohol monitoring devices.
- Has met all of the current requirements for a conditional license (there have been no other motor vehicle, drug, or criminal offense involving alcohol or drugs, and not an excessive user of alcohol or drugs). The act also amends the current law to include "prescription" drugs.

Section 2: Requires a sentencing judge in an impaired driving case to consider, as a mitigating factor, the completion of a mandated substance abuse assessment; compliance with the assessment recommendations; and the absence of alcohol in the driver's system for 60 days, as proven by a continuous alcohol monitoring system.

Sections 3 and 4: Allows a sentencing judge, as part of a Level One or Two Punishments in an impaired driving case, to impose continuous alcohol monitoring as a condition of probation. A judge must impose Level One punishment if there are two or more grossly aggravating factors. A Level Two punishment must be imposed if only one grossly aggravating factor applies.

Section 5 of the bill allows the Post Release Supervision and Parole Commission to require, as a condition of parole, that the parolee remain alcohol free, as proven by a continuous alcohol monitoring system. The act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Mr. Pell said there is an issue about equal access and that the Department of Corrections is not involved.

Discussion followed. Senator Tillman thought it was a good bill and moved for a favorable report.

Senator Berger was recognized and moved to amend the bill on Page 2, Line 37 by deleting the word "mandated."

Tracy Little explained various functions of the DOC Dart Program.

Senator Snow agreed that perhaps the word "mandated" should be deleted. Senator Berger's amendment was before the committee and was adopted.

Senator Rand thought that the committee should hear from the Department of Corrections before this program goes into action. The bill was temporarily displaced.

Robert Guy from the DOC was recognized and said this initiative was "outside the norm" and the Department is concerned that this involves one vendor. The bill was displaced.

Senator Cowell was recognized to speak on SB 925 (Create Beneficiary on Motor Vehicle Titles). She said the bill enacts new Article 9 of GS Chapter 47 to all a person who holds title to a motor vehicle to designate on the title a person to become owner when the title holder dies.

Former NC House Member, Sharon Thompson, a family law attorney from Durham, NC, was recognized to speak. She said the bill is just putting in place a simple procedure for transferring a motor vehicle upon death when someone does not a probate estate.

Discussion followed. Senators Rand and Jenkins had concerns about the bill.

Allison Roach an Administrative Officer from NC DMV and Chris Brooks from the Attorney General's Office were recognized said they had concerns with the bill.

Senator Nesbitt appointed a subcommittee to look further at the bill. Members included Senator Boseman, Chair, Senator Brown, Senator Jenkins, Senator Hoyle and Senator McKissick.

Senator Brunstetter was recognized to speak on SB 924 (School Bus Safety Act Correction). A Proposed Committee Substitute was distributed to the members and Senator Boseman moved that it be adopted for consideration. The motion passed.

Senator Brunstetter told the committee that this bill would remove the element of serious bodily injury from a felony violation of G.S. 20-217, and would change the definition of school bus to require the words "School Bus" to be written in plainly visible letters and that buses be painted yellow.

Derrick Graham from the NC Department of Public Instruction was recognized and spoke favorably for the bill.

Senator Clodfelter moved to give the PCS for SB 924 a favorable report, unfavorable to the original bill.

Discussion followed. Senator Soles was concerned because buses in his district were painted yellow with white tops. He then moved to amend the language in the bill that the buses should be "primarily yellow" and his motion passed.

The bill was carried over.

Senate bill 969, the Proposed Committee Substitute for SB 969, a Bill Analysis for the PCS to SB 969, Written Comments regarding SB 969 from Attorney Mark Behrens, Letter regarding SB 969 from NC Insurance Commissioner, Jim Long, Senate Bill 1290, a Proposed Committee Substitute for SB 1290, a Bill Analysis for the PCS to SB 1290, the Berger Amendment to SB 1290, Senate Bill 925, Senate Bill 924, a proposed Committee Substitute for SB 924, and a Bill Analysis for the PCS for SB 924 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 969

Short Title:	Statute of Repose/Products Liability Actions.	(Public)
Sponsors:	Senator Cowell.	
Referred to:	Judiciary I (Civil).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTE OF REPOSE FOR PRODUCTS LIABILITY ACTIONS.

The General Assembly of North Carolina enacts:

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

"**§ 1-46.5. Fifteen years.**

No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than fifteen years after the date of initial purchase for use or consumption."

SECTION 2. G.S. 1-50(a)(6) is repealed.

SECTION 3. This act becomes effective July 1, 2007, and applies to causes of action arising on or after that date; provided, however, this act shall not apply to a cause of action involving a product initially purchased for use or consumption prior to July 1, 1992.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 969
PROPOSED COMMITTEE SUBSTITUTE S969-CSTC-29 [v.2]

5/14/2007 8:01:12 PM

Short Title: Statute of Repose/Products Liability Actions. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTE OF REPOSE FOR PRODUCTS LIABILITY ACTIONS.

The General Assembly of North Carolina enacts:

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

"**§ 1-46.5. Fifteen years.**

No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than fifteen years after the date of initial purchase for use or consumption."

SECTION 2. G.S. 1-50(a)(6) is repealed.

SECTION 3. This act becomes effective July 1, 2007, and applies to products initially purchased for use or consumption on or after that date.

SENATE BILL 969:
Statute of Repose/Products Liability Actions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 15, 2007
Introduced by:	Sen. Cowell	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to First Edition S969-CSTC-29[v.2]		

SUMMARY: Senate Bill 969 would increase the statute of repose for product liability actions from 6 to 15 years.

The PCS revises the effective date of the bill.

[As introduced, this bill was identical to H1343, as introduced by Reps. Glazier, Love, which is currently in House Judiciary II.]

CURRENT LAW: G.S. 1-50(a)(6) prohibits actions for recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product brought more than 6 years after the date of initial purchase for use or consumption.

BILL ANALYSIS: Senate Bill 969 would repeal G.S. 1-50(a)(6), and would creating a new 15 year statute of repose for product liability actions, prohibiting actions for recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product brought more than fifteen years after the date of initial purchase for use or consumption.

EFFECTIVE DATE: This bill would become effective July 1, 2007 and apply to products initially purchased for use or consumption on or after that date.

BACKGROUND: A statute of repose limits the time within which an action may be brought, unlike a statute of limitations which sets the time within which proceedings must be commenced once a cause of action accrues.

S0969e1-SMTC-CSTC

Statute of Repose – Senate Bill 969

A statute of repose is an arbitrary bar to injured consumers who seek access to the courts. North Carolina has the most extreme statute of repose in the nation. If a defective product injures a consumer, consumers have no recourse through the courts if the product was purchased more than 6 years from date of injury.

39 states and Washington D.C. do not have any statute of repose. In these states, injured consumers face must file suit within x number of years after injury – the number of years depends on that state's statute of limitation.

11 states, including North Carolina, do have a statute of repose. In these states, injured consumers must overcome two barriers to justice – the statute of repose and the statute of limitations.

States With a Statute of Repose (11)

15 year	12 year	12 year	10 year	6 year
Iowa Texas	Florida[1]	Illinois[2]	Georgia[3] Idaho[4] Indiana Nebraska[5] Oregon[6] Tennessee	**North Carolina**

States With No Statute of Repose (39 + D.C.)

Alabama	D.C.	Michigan[11]	New Mexico	South Dakota[14]
Alaska	Hawaii	Minnesota	New York	Utah
Arizona	Kansas[8]	Mississippi	North Dakota[13]	Vermont
Arkansas	Kentucky[9]	Missouri	Ohio	Virginia
California	Louisiana[10]	Montana	Oklahoma	Washington[15]
Colorado	Maine	Nevada	Pennsylvania	West Virginia
Connecticut[7]	Maryland	New Hampshire[12]	Rhode Island	Wisconsin
Delaware	Massachusetts	New Jersey	South Carolina	Wyoming

[1] Florida's 12 year statute of repose has several significant exceptions – including aircraft and improvements to real property.
[2] It is 12 years from time of sale and 10 years from time of delivery.
[3] Exceptions for products causing birth defects or where manufacturer engages in wanton and willful conduct.
[4] Consumers may rebut the statute under several exceptions – including if the product's injury-causing aspect was not discoverable.
[5] If product manufactured in state with longer repose period, the longer period applies.
[6] It is 8 years for non-wrongful death cases.
[7] Connecticut has a 10 year "statute of repose," but it does not apply if the injured consumer can show the harm occurred during the product's "useful safe life." This is really a rebuttable presumption since injured consumers still have access to the courts.
[8] Kansas's statute has a presumption that the product's useful safe life is 10 years after delivery, but there are a number of exceptions.
[9] There is a presumption that the product was not defective if injury occurs more than 8 years after manufacture or 5 years after sale.
[10] There is no limitation at all for suits brought by minors.
[11] If product is in use for more than 10 years, the injured consumer loses strict liability presumptions.
[12] The NH Supreme Court declared the state's 12 year statute of repose unconstitutional in 1983.
[13] The ND Supreme Court declared the state's 10 and 11 year statute of repose unconstitutional in 2000.
[14] The SD Supreme Court declared the state's 6 year statute of repose unconstitutional in 1984.
[15] After 12 years, there is a rebuttable presumption that seller is not liable.

TESTIMONY OF MARK A. BEHRENS, ESQ.
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ON BEHALF OF THE
NORTH CAROLINA CITIZENS FOR BUSINESS & INDUSTRY

IN OPPOSITION TO SENATE BILL 969, AN ACT CONCERNING PRODUCTS LIABILITY

BEFORE THE SENATE
JUDICIARY I COMMITTEE

MAY 15, 2007

TESTIMONY OF MARK A. BEHRENS, ESQ.
ON BEHALF OF THE
NORTH CAROLINA CITIZENS FOR BUSINESS & INDUSTRY

Thank you for allowing me to testify in opposition to S.B. 969, a bill to dramatically extend the current six-year statute of repose for product liability actions to fifteen years. I am testifying on behalf of the North Carolina Citizens for Business & Industry ("NCCBI"), a coalition representing nearly 2,000 businesses of every size and sector who share a common mission to make sure that North Carolina is and remains the best state in America in which to do business and among the most competitive in the nation for jobs.

By way of background, I am a partner in Washington, D.C.-based Public Policy Group of the law firm of Shook, Hardy & Bacon L.L.P. Most of our firm's practice involves representing defendants in multi-state litigation, including North Carolina businesses. I have written and testified before state legislatures on civil justice reform, including with respect to statutes of repose for product liability actions. I received my law degree from Vanderbilt University Law School in 1990 and my B.A. from the University of Wisconsin-Madison in 1987.

Purpose Behind Statutes of Repose

Statutes of repose place an outer time limit on liability. Like a statute of limitations, a statute of repose specifies the time within which a claimant must file an action. The difference is that, in product liability cases, a statute of repose starts to run when the product was first purchased for use or consumption, rather than from the date of injury or death.

Statutes of repose strike a balance between the interests of injured parties to have access to the courts and the need for potential defendants to be protected from the heavy burdens that can arise from unlimited long-tail liability, including faded memories, lost evidence, the

disappearance of witnesses, and the increased likelihood of intervening negligence. Statutes of repose guard against the risk of stale litigation.

Common sense experience indicates that if a product has performed as intended for many years and harm occurs, the most likely explanation is that the product wore out, was not properly maintained, or was misused. It would be highly unusual for the harm to be the result of a product defect after many years of reliable use. Not surprisingly, manufacturers often win cases involving old products. The cost of defending such claims, however, can be substantial, both in terms of money spent and "person power" lost while company employees respond to discovery, have their depositions taken, and are forced to sit through lengthy trials. The result is a great incentive for manufacturers to settle even the flimsiest cases, so long as the settlement is less than or approximately equal to defense costs.

North Carolina's six-year product liability statute of repose was enacted with these sound policies in mind. The legislature determined that after six years, product failures are generally due to reasons that are not the fault of manufacturers, sellers, or distributors. The statute also serves the public policy goals of reliability and availability of evidence after long periods of time. In addition, the statute allows manufacturers and retailers to plan their affairs without the potential for unknown long-tail liability.

The dramatic change proposed in S.B. 969 would upset this delicate balance. For example, the change could alter the costs of insurance premiums for a range of businesses. Increased costs in this area would likely be passed on to consumers, resulting in higher prices for goods they purchase. The bill also would make North Carolina manufacturers and sellers less competitive in the marketplace. Such interests warrant maintaining the current law.

Increasing Repose Period Would Have Other Adverse Impacts

If enacted, S.B. 969 would establish a troubling precedent for many other types of potential defendants in North Carolina. For example, North Carolina currently has a five-year statute of repose (N.C. Stat. § 1-51) applicable to actions against railroads for right-of-way use and occupancy of any lands by the company for use of its railroad. In addition, North Carolina currently has a six-year statute of repose (N.C. Stat. § 1-50) for claims involving improvements to real property; actions against an executor, administrator, collector, or guardian after the auditing of his final account; for injury to any incorporeal hereditament; and for actions against a corporation or the holder of a certificate or duplicate certificate of stock in the corporation on account of any dividend paid or allotted by the corporation to the holder of the certificate or duplicate certificate of stock in the corporation. North Carolina also has a seven-year statute of repose (N.C. Stat. § 1-49) for actions by a creditor of a deceased person against his personal or real representative.

If the legislature adopts a fifteen-year limit for product liability actions, it is reasonable to assume that the legislature will be asked to adopt this substantially longer repose period for many other types of claims, such as those mentioned above. The effect would be to foster litigation against many North Carolina businesses and individuals. The threat of such new exposure would undermine predictability in the law and hurt business development in North Carolina.

Passage Would Hurt State Businesses

At present, North Carolina has one of the most fair and predictable legal climates in the country. This climate is a significant factor in the state's ability to attract jobs and business investment. The Tar Heel State ranked #9 in the Pacific Research Institute 2006 Tort Liability

Index and #16 in the 2007 U.S. Chamber of Commerce Institute for Legal Reform's survey of balanced state tort systems. S.B. 969 could threaten North Carolina's competitive position and unleash a wave of questionable lawsuits against manufacturers and retailers, including many smaller businesses. Such a result would be contrary to the statute's basic purpose. As the Supreme Court of North Carolina acknowledged in *Tetterton v. Long Mfg. Co., Inc.*, 332 S.E.2d 67, 73 (N.C. 1985), when addressing the constitutionality of N.C. Gen. Stat. § 1-50, "The enactment of the statute of repose was generally intended to shield these manufacturers of durable goods from 'openended' liability created by allowing claims for an indefinite period of time after the product was first sold and distributed."

Manufacturers employ approximately 700,000 North Carolinians, or about one out of every six jobs in the state. North Carolina is home to more than 13,000 manufacturers. To allow lawsuits fifteen years after the sale of a product would subject these job-creators to the unfairness and significant expense of having to litigate stale claims. There is no compelling reason for the legislature to stifle innovation and investment in this manner or at this time.

For all of these reasons, NCCBI urges you to oppose S.B. 969.

Attachment 5

DEPARTMENT OF INSURANCE
State of North Carolina

1201 MAIL SERVICE CENTER
RALEIGH, N.C. 27699-1201

JIM LONG
COMMISSIONER OF INSURANCE

(919) 733-3058

May 14, 2007

The Honorable Martin Nesbitt
Chairman, Senate Judiciary 1
Legislative Office Building
North Carolina General Assembly
Raleigh, NC 27601-1096

Via Hand Delivery and Email

The Honorable Janet Cowell
State Senator
North Carolina General Assembly
Raleigh, NC 27601-1096

Re: SB 969 (Statute of Repose/Products Liability Actions) – LETTER OF SUPPORT

Dear Chairman Nesbitt and Senator Cowell:

Today I write you about Senate Bill 969, filed by Senator Cowell and on the calendar tomorrow morning for the Senate Judiciary 1 Committee chaired by Senator Nesbitt.

You may be surprised that the Commissioner of Insurance and State Fire Marshal would take a direct position on this bill. However, **I am forced to support SB 969 for two reasons.**

First, some legislators have filed bills this session that would strip "industrial machinery" from protections provided for decades by the State Building Code and our State Electrical Code (which is the National Electrical Code). If the legislature passes SB 490 (also on the calendar tomorrow but in Senate Commerce) or its companion bills (HB 999, SB 575, and Part 7 of HB 39 and SB 91), then it would eliminate one of the front line ways of preventing fires, explosions, severe burns and injuries, and death that result from industrial machinery left unregulated by State and local officials. The only way to help offset that unacceptable proposal is to extend the statute of repose regarding products liability actions. At least that would help persons whose likelihood of injury would increase if any one of those "industrial machinery" bills pass.

Second, if North Carolina has a longer statute of repose then it will help keep workers compensation premiums down. How, you may ask. If a worker is injured or killed by a faulty machine, then an extended statute of repose will help the worker or the worker's estate *and the business* seek subrogation or repayments for the extensive monies paid out in workers' compensation payments. It would help reimburse Medicaid as well if the injured person has received such coverage after an explosion, fire or injury.

I ask that Senate Judiciary 1 and the Senate pass this legislation. In doing so it will help me meet my obligations as State Fire Marshal and Insurance Commissioner, respectively: By protecting the public and by trying to maintain workers' compensation rates that are affordable, as low as possible, and reasonably appropriate.

Thank you for your consideration of the above.

With warmest personal regards, I am

Very truly yours,

JIM LONG
Commissioner of Insurance and State Fire Marshal

c: Mr. Wayne Goodwin, Assistant Commissioner of Insurance
and Assistant State Fire Marshal

Ms. Rose Vaughn Williams
Legislative Counsel, DOI

Members of Senate Judiciary 1 Committee

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1290

Short Title:	Alcohol Monitoring Systems for DWI Offenders.	(Public)
Sponsors:	Senators Snow and Berger of Franklin.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE USE OF ALCOHOL MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION, OR PAROLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 12 months under G.S. 20-17(a)(2) if he provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 12 months while being monitored by continuous alcohol monitoring devices.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, or a drug law

offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) He is also not currently an excessive user of prescription drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

SECTION 2. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 18 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 18 months while being monitored by continuous alcohol monitoring devices.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) He is not currently an excessive user of prescription drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

SECTION 3. G.S. 20-179(e) reads as rewritten:

"(e) Mitigating Factors to Be Weighed. – The judge shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(6a) Completion of a mandated substance abuse assessment, compliance with its recommendations, and the maintaining of 60 days of continuous sobriety, as proven by a continuous alcohol monitoring system.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense."

SECTION 4. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation. The judge may impose any other lawful condition of probation, such as continuous alcohol monitoring."

SECTION 5. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful

condition of probation. The judge may impose any other lawful condition of probation, such as continuous alcohol monitoring."

SECTION 6. G.S. 15A-1374(b) is amended by adding a new subdivision to read:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(8b) Remain alcohol free and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation."

SECTION 7. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1290
PROPOSED COMMITTEE SUBSTITUTE S1290-CSRK-30 [v.4]

5/14/2007 4:23:15 PM

Short Title: Alcohol Monitoring Systems for DWI Offenders. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION, OR PAROLE.

The General Assembly of North Carolina enacts:

SECTION 1(a). G.S. 20-19(d)(2) reads as rewritten:

"(2) He is not currently an excessive user of alcohol or prescription ~~drugs.~~drugs, or a user of any controlled substance."

SECTION 1(b). G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription ~~drugs.~~drugs, or a user of any controlled substance.

The Division may conditionally restore the person's license after it has been revoked for at least 12 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 12 months while being monitored by continuous alcohol monitoring devices.
(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.
(3) He is not currently an excessive user of prescription drugs.
(4) He is not unlawfully using any controlled substance.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

SECTION 2. G.S. 20-179(e) reads as rewritten:

"(e) Mitigating Factors to Be Weighed. – The judge shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.
(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
(6a) Completion of a mandated substance abuse assessment, compliance with its recommendations, and simultaneously maintaining 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system.
(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), ~~(6)~~ (6), (6a) and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense."

SECTION 3. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of ~~probation.~~ probation, such as abstinence from alcohol consumption to be verified by continuous alcohol monitoring."

SECTION 4. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of ~~probation.~~probation, such as abstinence from alcohol consumption to be verified by continuous alcohol monitoring."

SECTION 5. G.S. 15A-1374(b) is amended by adding a new subdivision to read:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(8b) Remain alcohol free, and prove such abstinence through evaluation by a continuous alcohol monitoring system.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation."

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1290:
Alcohol Monitoring Systems for DWI Offenders

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 4, 2007
Introduced by:	Sen. Snow	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: This act would allow for the conditional restoration of a revoked license based upon a an impaired driving offense, if a continuous alcohol monitoring device shows that the person has not consumed alcohol for the prescribed period and other conditions are met. The act would also authorize a judge to impose continuous alcohol monitoring as a condition of probation or parole. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

[As introduced, this bill was identical to H1408, as introduced by Reps. Alexander, Barnhart, Walend, which is currently in House Judiciary I.]

CURRENT LAW: If a person has two or more impaired driving offenses, and the most recent offense is within 5 years immediately preceding the date of the offense for which the license is being revoked, then there is a permanent revocation of the license. The DMV may issue a conditional license after three years if there have been no other motor vehicle, drug, or criminal offense involving alcohol or drugs. The person must also not be a current excessive user of alcohol or drugs.

BILL ANALYSIS:

Section 1: Allows the DMV to issue a conditional license to a person who is subject to permanent revocation period after 12 months if:

- The driver has not consumed alcohol for 12 months while being monitored by continuous alcohol monitoring devices.
- Has met all of the current requirements for a conditional license (there have been no other motor vehicle, drug, or criminal offense involving alcohol or drugs, and not an excessive user of alcohol or drugs). The act amends the current law to include "prescription" drugs.

Section 2: Requires a sentencing judge in an impaired driving case to consider, as a mitigating factor, the completion of a mandated substance abuse assessment; compliance with the assessment recommendations; and the absence of alcohol in the driver's system for 60 days, as proven by a continuous alcohol monitoring system.

Sections 3 and 4: Allows a sentencing judge, as part of a Level One or Two Punishments in an impaired driving case, to impose continuous alcohol monitoring as a condition of probation. A judge must impose Level One punishment if there are two or more grossly aggravating factors. A Level Two punishment must be imposed if only one grossly aggravating factor applies.

Section 5: Allows the Post-Release Supervision and Parole Commission to require, as a condition of parole, that the parolee remain alcohol free, as proven by a continuous alcohol monitoring system.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

(over)

G.S. 20-179(c) . . .

. . .

The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:
   a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
   b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

   Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

. . .

Attachment 9

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/15/07

S. B. No. 1290 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) P. Berger

1 moves to amend the bill on page 2, line 37

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "mandated".

4

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 925

Short Title:	Create Beneficiary on Motor Vehicle Titles.	(Public)
Sponsors:	Senator Cowell.	
Referred to:	Commerce, Small Business and Entrepreneurship.	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A TRANSFER ON DEATH PROVISION FOR MOTOR VEHICLES TITLED IN NORTH CAROLINA TO ALLOW BENEFICIARIES TO TAKE TITLE OF THE MOTOR VEHICLE UPON THE DEATH OF AN OWNER OR OWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-57(e) reads as rewritten:

"**§ 20-57. Division to issue certificate of title and registration card.**

...

(e) The certificate of title shall contain upon the reverse side an assignment of title or interest and warranty by registered owner or registered dealer. The purchaser's application for North Carolina certificate of title shall be made on a form prescribed by the Commissioner and shall include a space for notation of liens and encumbrances on the vehicle at the time of transfer. The certificate of title shall contain upon the reverse side a place for the registered owner or owners to provide the name of a beneficiary for a transfer on death, pursuant to Article 9 of Chapter 47 of the General Statutes, of any interest held by the owner or owners in the motor vehicle. The designation shall state the beneficiary is entitled to any interest held by the owner or owners and is to be transferred on death. This transfer shall be subject to any liens attached by law or any security interest properly recorded and perfected on the title pursuant to G.S. 20-58. The rights of any lienholder shall not be affected by the designation of a beneficiary under this section or Article 9 of Chapter 47 of the General Statutes. Nothing in this subsection shall require the designation of a beneficiary.

..."

SECTION 2. Chapter 47 of the General Statutes is amended by adding a new Article to read:

"Article 9.

"Transfer of Motor Vehicles on Death.

"**§ 47-121. Motor vehicles; transfer-on-death.**

A motor vehicle, as defined by G.S. 20-4.01(23), which is required to be titled under Chapter 20 of the General Statutes, may be titled in transfer-on-death, TOD, form by including on the certificate of title a designation of a beneficiary or beneficiaries to whom the motor vehicle shall be transferred on death of the owner or the last survivor of the joint tenant with right of survivorship owners, subject to the rights of all lienholders. Nothing in this Article shall require the designation of a beneficiary on a certificate of title.

"**§ 47-122. Designation of a beneficiary on the certificate of title.**

A motor vehicle is registered in transfer-on-death form by designating on the certificate of title the name of a beneficiary in the place provided on the certificate of title for such designation by the Division of Motor Vehicles.

"**§ 47-123. Beneficiaries; interest; change.**

The transfer-on-death beneficiary or beneficiaries shall have no interest in the motor vehicle until the death of the owner or the last survivor of the joint tenant with right of survivorship owners. A beneficiary designation may be changed at any time by the owner or all of the joint tenants with right of survivorship owners then surviving, without the consent of the beneficiary or beneficiaries, by filing an application for a subsequent certificate of title. An application for a new title to change a beneficiary is subject to the application and fee provisions for certificates of title provided in Chapter 20 of the General Statutes.

"**§ 47-124. Vesting of ownership in beneficiary.**

Ownership of a motor vehicle titled in transfer-on-death form, for which an application for a subsequent certificate of title has not been filed, shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last of the joint tenants with right of survivorship owners, subject to the rights of all lienholders.

"**§ 47-125. Nontestamentary disposition.**

A certificate of title in transfer-on-death form shall not be considered a testamentary disposition or be invalidated due to nonconformity with the provisions of Chapter 31 of the North Carolina General Statutes."

SECTION 3. This act becomes effective January 1, 2008, and applies to all titles issued or reissued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 924

Short Title:	School Bus Safety Act Correction.	(Public)
Sponsors:	Senator Brunstetter.	
Referred to:	Judiciary I (Civil).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE ELEMENT MAKING PASSING A STOPPED SCHOOL BUS AND STRIKING A PERSON A FELONY FROM REQUIRING "SERIOUS BODILY INJURY" AND REMOVING THE REQUIREMENT OF SIGNAGE BEING AT LEAST EIGHT INCHES FROM THE DEFINITION OF SCHOOL BUS TO CORRESPOND TO THE CHANGES MADE TO G.S. 20-217 IN THE 2005 SESSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(g) reads as rewritten:

"(g) Any person who willfully violates subsection (a) of this section and strikes any ~~person causing serious bodily injury to that person~~ person shall be guilty of a Class I felony."

SECTION 2. G.S. 20-4.01d4 reads as rewritten:

"d4. School bus. – A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and ~~rear in letters at least 8 inches in height.~~rear. The term includes a public, private, or parochial vehicle that meets this description."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 924
PROPOSED COMMITTEE SUBSTITUTE S924-CSTC-27 [v.4]

5/15/2007 7:55:46 AM

Short Title: School Bus Safety Act Correction. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE ELEMENT MAKING PASSING A STOPPED SCHOOL BUS AND STRIKING A PERSON A FELONY FROM REQUIRING "SERIOUS BODILY INJURY" AND REMOVING THE REQUIREMENT OF SIGNAGE BEING AT LEAST EIGHT INCHES FROM THE DEFINITION OF SCHOOL BUS TO CORRESPOND TO THE CHANGES MADE TO G.S. 20-217 IN THE 2005 SESSION AND REQUIRING THAT SCHOOL BUSES BE PAINTED YELLOW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(g) reads as rewritten:

"(g) Any person who willfully violates subsection (a) of this section and strikes any ~~person causing serious bodily injury to that person~~ person shall be guilty of a Class I felony."

SECTION 2. G.S. 20-4.01(27)d4. reads as rewritten:

"d4. School bus. – A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the plainly visible words "School Bus" on the front and ~~rear in letters at least 8 inches in height.~~rear.–The term includes a public, private, or parochial vehicle that meets this description."

SECTION 3. G.S. 20-4.01(27)d4. reads as rewritten:

"d4. School bus. – A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, that is painted yellow, and that bears the

plainly visible words "School Bus" on the front and rear. The term includes a public, private, or parochial vehicle that meets this description."

SECTION 4. Section 3 of this act is effective August 1, 2007 and applies to all school buses acquired on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 924:
School Bus Safety Act Correction

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 15, 2007
Introduced by:	Sen. Brunstetter	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to First Edition S924-CSTC		

SUMMARY: Senate Bill 924 would remove the element of serious bodily injury from a felony violation of G.S. 20-217, and would change the definition of school bus to require the words "School Bus" to be written in plainly visible letters and that buses be painted yellow.

CURRENT LAW: G.S. 20-4.01(27)d4. defines a "school bus" as a vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day. The vehicle must be equipped with:

- Alternately flashing red lights on the front and rear,
- A mechanical stop signal, and
- A sign bearing the words "School Bus" on the front and rear in letters at least 8 inches in height.

This definition applies to public, private, or parochial vehicles that meet the description.

G.S. 20-217 requires motor vehicles to stop when a school bus is displaying its mechanical stop signal or flashing red lights and is stopped for the purpose of receiving or discharging passengers, unless the driver is traveling in the opposite direction on a divided roadway from a school bus stopped across the dividing space or physical barrier. The requirement to stop applies only in the event that the school bus bears on the front and rear a plainly visible sign containing the words "school bus." Violation of the section is a Class 1 misdemeanor unless the driver willfully strikes any person and causes serious bodily injury to that person, which is a Class I felony.

BILL ANALYSIS:

Section 1: Would remove the requirement in G.S. 20-217(g) that serious bodily injury be caused to the person in order for the violation to be a Class I felony.

Section 2: Would remove the requirement in the definition of "school bus" in G.S. 20-4.01(27)d4. that the words "School Bus" be displayed in letters at least 8 inches high. Would require that the words "School Bus" be plainly visibly on the front and rear of the bus.

Section 3: Would add a new requirement in the definition of "school bus" in G.S. 20-4.01(27)d4. that the vehicle be painted yellow.

EFFECTIVE DATE: Section 3 of the bill would become effective August 1, 2007 and would apply to all school buses acquired on or after that date. The remainder of the bill would become effective when it becomes law.

BACKGROUND:

The State Board of Education is required under G.S. 115C-240(c) to adopt rules and regulation with reference to the construction, equipment, color and maintenance of school buses for public school transportation systems. These regulations currently require that public school buses be painted with National School Bus Yellow polyurethane paint. (2006 Type-C School Bus Specifications) These regulations do not apply to private and parochial school buses, however.

S0924e1-SMTC-CSTC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 8:00 – 10:00 p.m. May 15, 2007
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Simmons	GSK
Wes Lester	GSK
Steve Mitchell	Novartis
John Bowdish	AstraZeneca
Mildred Spearman	NCDOC
AL Boyce	NA
Joseph Bowman	N/A
Portia Manley	NCDOT/DMV
Richard Howard	NCDOT/DMV
Allison Roach	NCOMV
Jan Stewart	IFNC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 8:00 – 10:00 p.m. — May 15, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sandy Sands	WCSR
Bill O'Donnell	NCSBA
Leanne Winner	NCSRA
Bill Wilson	AARP
Todd Barlow	NCATL
Paul Parks	NCATL
Dirk Taylor	NCAHA
Shawn Thompson	
Tracy Little	NCDOC
Robert Lee Guy	NCDOC
Jim Moore	NCDOC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 8:00 – 10:00 p.m. May 15, 2007

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CASSANDRA WHITE	GOV. OFFICE
TROY D. PAGE	NC SENTENCING COMMISSION
Cathy Matthews	DMV
Brenda Freeman	DMV
Andy Ellen	NCICMA
Rick O'Brien	PFPNC
Bill Wiktenfeld	NC Petroleum Council
Gary Harris	NC Petroleum Marketers
Ben Gaylor	Gaylor Law Firm
	MWC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 8:00 – 10:00 p.m. May 15, 2007
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Suddath	NCBEV
Kathy Hawkins	Progress Energy
Rose Williams	DOI
DREW MORETZ	RALEIGH CHAMBER
DANIEL BAUM	KENNEDY COVINGTON
CHRIS BROOKS	DOJ
Bruce Roberts	Rehab. Support
Nash Roberts	Rehab. Support
JOSH WYNNE	EQUALITY NC
ED FARTHING	EQUALITY NC
Ian Palmquist	CNC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee 8:00 – 10:00 p.m. May 15, 2007

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Derek Graham	NCDPI
Harry Wilson	SBE
Gregg Thorpe	MFIB
Scott Gardner	Duke Energy
Christine Wunsche	106 - Daily Bulletin

SENATE JUDICIARY I COMMITTEE
(Civil)

May 15, 2007
After Session. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Tuesday, May 15, 2007 in Room 1027 of the Legislative Building. A quorum was present.

Senator Nesbitt called the meeting to order and recognized Senator John Snow to further discuss SB 1290 (Alcohol Monitoring Systems for DWI Offenders). Clodfelter moved to adopt a Proposed Committee Substitute that was distributed to the committee and the motion passed.

Senator Snow called upon Committee Counsel, Hal Pell, to explain the changes that were made to the bill since the morning meeting of the committee where upon Senator Clodfelter offered two technical amendments which were adopted by unanimous vote.

Senator Clodfelter moved to incorporate the amendments into a new committee substitute, give that bill a favorable report, unfavorable as to the original bill. The motion passed.

Senator Brunstetter was recognized to speak on SB 924. A new committee substitute was distributed to the members, and Senator Brunstetter moved for its adoption. The motion passed.

Senator Brunstetter said the bill was changed to address Senator Soles' concerns about the color of a school bus being completely yellow. That language was changed to, "that is painted primarily yellow below the roofline."

Committee Counsel, Kara McCraw, was recognized to give a summary of the bill. She said the bill would remove the element of serious bodily injury from a felony violation of G.S. 20-217, and would change the definition of school bus to require the words "School Bus" to be written in plainly visible letters and those buses be primarily painted yellow.

When there was no further discussion, Senator Brunstetter moved to give the proposed committee substitute a favorable report, unfavorable as to the original bill. The motion passed.

Senator Nesbitt next recognized Senator Boseman to speak on SB 290 (Amend Speeding to Elude Arrest Statute). A proposed committee substitute was distributed to the committee and Senator Boseman moved that it be adopted for consideration. The motion passed.

Committee Counsel, Kara McCraw, was asked to speak on the bill. She said SB 290 would provide for forfeiture of vehicles used in felonious speeding to elude arrest and provides that the process for forfeiture will be pursuant to G.S. 14-86.1.

Extensive discussion followed. Members were concerned that the bill went too far. There was discussion to amend the bill.

Senator Boseman told the committee that this legislation was requested by the City Attorney for the City of Wilmington Police Department.

The bill was carried over.

Senator Phil Berger was recognized to speak on SB 1326 (Consistency/Waiver of Governmental Immunity). A proposed committee substitute was distributed to the members and Senator Berger moved that it be adopted for consideration. The motion passed.

Senator Berger said this bill is to provide consistency in waiver of immunity by local government by treating participation in risk pools and trusts for payment of liability claims by school boards like participation in other governmental risk pools. He said he has worked with the School Board Association and the Trial Lawyers on the bill.

Senator Nesbitt told the committee that the bill is a work in progress and is a much needed initiative.

He recognized Leanne Winner who represents the North Carolina School Boards Association. She gave a history on the "Trust". She said that in the mid 1980s, there was a worldwide insurance crisis and school boards and other entities throughout the state and country were unable to secure insurance on the commercial market anywhere in the world. School boards came to the Association seeking help, in particular because they had exposure for items that they could not claim governmental immunity for. So the School Boards created a Trust primarily for those items. Currently there are 73 of the 115 districts participating in the Trust. All of the other school districts except for two purchase commercial insurance. Those two are Winston-Forsyth and Charlotte-Mecklenburg schools. Those two school systems operate an arrangement with other cities and the county to provide coverage. She said they are not a risk pool, but operate under through inter-local agreements.

She said there are two major problems with the bill. The first is by naming the North Carolina School Boards Trust specifically, there are some constitutional issues with that under the equal protection clause. Five or six different attorneys who have looked at this legislation agree. The other is that in investigation of what a risk pool is and how Chapter 58 operates, in contacting the Department of Insurance, they found that no one operates under this section of Chapter 58. There are no risk pools in North Carolina for governmental entities.

Ms. Winner said that the League of Municipalities and County Commissioners' Association also operate "Trusts," but those are not risk pools. The League does not assert immunity, but the County Commissions' Association does in their coverage documents. She said they are concerned that if school boards lose the ability to claim governmental immunity by participating in the Trust, whether the Trust will be able to survive in the market or whether they will, over time, have to fold given the competitive nature of the market. She said they are not in a position to have the luxury to not charge the actuarial costs that are necessary. They are concerned, that if any change is made, that the Trust won't survive. Ms. Winner said that they asked for the effective date of July 1, 2009, so they would have time to try to answer all these questions and to be able to factor in actuarially. They have already been doing their quotes for the year 2008.

Extensive discussion followed.

Dick Taylor from the Academy of Trial Lawyers disputed some of Ms. Winner's assertions. The school board Trust can pick and choose which claims it will pay.

Senator Brunstetter moved to give the proposed committee substitute a favorable report, unfavorable as to original bill and the motion carried.

There being no further business, the meeting adjourned at 6:00 p.m.

Senate Bill 1290, a Proposed Committee Substitute for SB 1290, the Clodfelter amendment to the PCS for SB 1290, Senate Bill 924, a Proposed Committee Substitute for SB 924, a Bill Analysis for the PCS for SB 924, Senate Bill 290, a Proposed Committee Substitute for SB 290, a Bill Analysis for the PCS for SB 290, Senate Bill 1326, the Proposed Committee Substitute to SB 1326, and a Bill Analysis for the PCS to SB 1326 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, respectively.

Respectfully submitted,

Senator Martin L. Nesbit
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1290

Short Title:	Alcohol Monitoring Systems for DWI Offenders.	(Public)
Sponsors:	Senators Snow and Berger of Franklin.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE USE OF ALCOHOL MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION, OR PAROLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 12 months under G.S. 20-17(a)(2) if he provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 12 months while being monitored by continuous alcohol monitoring devices.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, or a drug law

offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) He is also not currently an excessive user of prescription drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

SECTION 2. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or prescription drugs.

The Division may conditionally restore the person's license after it has been revoked for at least 18 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 18 months while being monitored by continuous alcohol monitoring devices.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) He is not currently an excessive user of prescription drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

SECTION 3. G.S. 20-179(e) reads as rewritten:

"(e) Mitigating Factors to Be Weighed. – The judge shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(6a) Completion of a mandated substance abuse assessment, compliance with its recommendations, and the maintaining of 60 days of continuous sobriety, as proven by a continuous alcohol monitoring system.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense."

SECTION 4. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation. The judge may impose any other lawful condition of probation, such as continuous alcohol monitoring."

SECTION 5. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful

condition of probation. The judge may impose any other lawful condition of probation, such as continuous alcohol monitoring."

SECTION 6. G.S. 15A-1374(b) is amended by adding a new subdivision to read:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

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

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(8b) Remain alcohol free and wear a device that permits the defendant's compliance with the condition to be monitored electronically.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation."

SECTION 7. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Attachment 2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 2

SENATE BILL 1290
Judiciary I (Civil) Committee Substitute Adopted 5/16/07

Short Title: Alcohol Monitoring Systems for DWI Offenders. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS TO BE USED TO MONITOR INDIVIDUALS WHO HAVE BEEN SENTENCED FOR DWI CONVICTIONS OR AS NECESSARY BY THE COURTS TO ENSURE COMPLIANCE WITH CONDITIONS OF RELEASE, PROBATION, OR PAROLE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-19(d)(2) reads as rewritten:

"(2) He is not currently an excessive user of ~~alcohol~~ alcohol, drugs, or prescription ~~drugs.~~ drugs, or unlawfully using any controlled substance."

SECTION 1.(b) G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of ~~alcohol~~ alcohol, drugs, or prescription ~~drugs.~~ drugs, or unlawfully using any controlled substance.

The Division may conditionally restore the person's license after it has been revoked for at least 12 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof that:

(1) He has not consumed any alcohol for 12 months while being monitored by continuous alcohol monitoring device of a type approved by the Secretary of the Department of Correction. The Secretary shall not unreasonably withhold approval of a continuous alcohol monitoring system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) He is not currently an excessive user of drugs or prescription drugs.

(4) He is not unlawfully using any controlled substance.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for a period up to three years from the date of restoration."

SECTION 2. G.S. 20-179(e) reads as rewritten:

"(e) Mitigating Factors to Be Weighed. – The judge shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

...

(6a) Completion of a substance abuse assessment, compliance with its recommendations, and simultaneously maintaining 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system. The continuous alcohol monitoring system shall be of a type approved by the Secretary of the Department of Correction. The Secretary shall not unreasonably withhold approval of a continuous alcohol monitoring system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), ~~(6)~~ (6), (6a), and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense."

SECTION 3. G.S. 20-179 is amended by adding a new subsection to read:

"(h1) The judge may impose, as a condition of probation for offenders subject to Level One or Level Two punishments, that the offender abstain from alcohol consumption for a minimum of 30 days, to a maximum of 60 days, as verified by a continuous alcohol monitoring system. The total cost for the continuous alcohol monitoring system may not exceed one thousand dollars ($1,000). The offender's abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type approved by the Secretary of the Department of Correction. The Secretary shall not unreasonably withhold approval of a continuous alcohol monitoring system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against."

SECTION 4. G.S. 15A-1343 is amended by adding a new subsection to read:

"(b4) The court shall not impose, as a condition of probation pursuant to G.S. 20-179(h1), the use of a continuous alcohol monitoring system, unless:

(1) The court waives, upon good cause shown, an offender's payment of any costs associated with the system; and

(2) The local governmental entity, responsible for the incarceration of the offender in the local confinement facility, agrees to pay the costs associated with the system due to the waiver."

SECTION 5. G.S. 15A-1374(b) is amended by adding a new subdivision to read:

"(8b) Remain alcohol free, and prove such abstinence through evaluation by a continuous alcohol monitoring system of a type approved by the Secretary of the Department of Correction. The Secretary shall not unreasonably withhold approval of a continuous alcohol monitoring system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against."

SECTION 6. The Department of Correction shall establish regulations for continuous alcohol monitoring systems that are authorized for use by the courts as evidence that an offender on probation has abstained from the use of alcohol for a specified period of time. A "continuous alcohol monitoring system" is a device that is worn by a person that can detect, monitor, record, and report the amount of alcohol within the wearer's system over a continuous 24-hour daily basis. The regulations shall include the procedures for wearing of the monitoring device, supervision of the offender, collection and monitoring of the results, and the reporting to the judge ordering or accepting the use of the system as evidence of alcohol abstinence. The Secretary shall approve any continuous alcohol monitoring system prior to its use by a court as evidence of alcohol abstinence, or prior to ordering the use of a continuous alcohol monitoring system as a condition of

probation. The Secretary shall not unreasonably withhold approval of a continuous alcohol monitoring system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

SECTION 7. The Department of Correction shall issue a Request for Proposal for continuous alcohol monitoring equipment and monitoring services to develop a pilot program by the Division of Community Corrections' alcohol monitoring programs. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services. The Department shall design the RFP to use the most recent, cost-effective technology available; the Department shall not restrict vendors to the specifications of any equipment currently accepted by the courts as evidence of abstinence from alcohol by an offender. The Department shall also issue a separate RFP for continuous alcohol monitoring as an intermediate sanction. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services. The RFPs shall be issued by January 1, 2008.

The Department of Correction shall report by March 1, 2008, to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the responses to the RFPs.

SECTION 8. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2008, on the following:

(1) The Department's evaluation of continuous alcohol monitoring systems as evidence of an offender's abstinence from alcohol.

(2) The results of the Requests for Proposal issued in the 2007-2008 fiscal year for continuous alcohol monitoring of offenders supervised by the Division of Community Corrections.

(3) The Department's recommendations for implementing continuous alcohol monitoring, including:

a. An evaluation of the costs and benefits of alcohol monitoring technology.

b. The size and characteristics of the offender population and the proposed number of offenders to be monitored.

c. The contractual and internal costs of the monitoring program.

d. The proposed caseloads for probation officers who would supervise offenders using continuous alcohol monitoring technology.

e. Whether the State should conduct a pilot program for continuous alcohol monitoring in limited jurisdictions or statewide.

The Department shall also explore funding options through grants and other sources, including the possibility of charging a fee to offenders to partially offset the costs of the program. The Department shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on any funds identified.

SECTION 9. Sections 1 through 5 of this act become effective October 1, 2007, and apply to offenses committed on or after that date. Nothing in this act shall be construed to prohibit a court from either continuing or allowing the use of continuous alcohol monitoring systems as evidence of alcohol abstinence prior to the effective date of Sections 1 through 5. The remainder of this act is effective when it becomes law.

Attachment 3

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/15

S. B. No. 1290 Amendment No. 2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Godfelter

1 moves to amend the bill on page 1, line 9

2 ( ) WHICH CHANGES THE TITLE

3 by

4 striking through the phrase "alcohol" and

5

6 substituting the phrase "alcohol, drugs,".

7

8

9 and on page 4, lines 23, 24 and

10 27 by deleting the subsubdivision

11 letters "d", "e", and "f" and

12 substituting the letters "c.", "d.", and

13 "e," respectively.

14

15

16

17

18

19

SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 924

Short Title:	School Bus Safety Act Correction.	(Public)
Sponsors:	Senator Brunstetter.	
Referred to:	Judiciary I (Civil).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE ELEMENT MAKING PASSING A STOPPED SCHOOL BUS AND STRIKING A PERSON A FELONY FROM REQUIRING "SERIOUS BODILY INJURY" AND REMOVING THE REQUIREMENT OF SIGNAGE BEING AT LEAST EIGHT INCHES FROM THE DEFINITION OF SCHOOL BUS TO CORRESPOND TO THE CHANGES MADE TO G.S. 20-217 IN THE 2005 SESSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(g) reads as rewritten:

"(g) Any person who willfully violates subsection (a) of this section and strikes any ~~person causing serious bodily injury to that person~~ person shall be guilty of a Class I felony."

SECTION 2. G.S. 20-4.01d4 reads as rewritten:

"d4. School bus. – A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and ~~rear in letters at least 8 inches in height.~~rear. The term includes a public, private, or parochial vehicle that meets this description."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 924
PROPOSED COMMITTEE SUBSTITUTE S924-CSTC-27 [v.5]

5/15/2007 1:58:48 PM

Short Title: School Bus Safety Act Correction. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE ELEMENT MAKING PASSING A STOPPED SCHOOL BUS AND STRIKING A PERSON A FELONY FROM REQUIRING "SERIOUS BODILY INJURY" AND REMOVING THE REQUIREMENT OF SIGNAGE BEING AT LEAST EIGHT INCHES FROM THE DEFINITION OF SCHOOL BUS TO CORRESPOND TO THE CHANGES MADE TO G.S. 20-217 IN THE 2005 SESSION AND REQUIRING THAT SCHOOL BUSES BE PAINTED YELLOW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(g) reads as rewritten:

"(g) Any person who willfully violates subsection (a) of this section and strikes any ~~person causing serious bodily injury to that person~~ person shall be guilty of a Class I felony."

SECTION 2. G.S. 20-4.01(27)d4. reads as rewritten:

"d4. School bus. – A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the plainly visible words "School Bus" on the front and ~~rear in letters at least 8 inches in height.~~rear.–The term includes a public, private, or parochial vehicle that meets this description."

SECTION 3. G.S. 20-4.01(27)d4. reads as rewritten:

"d4. School bus. – A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, that is painted primarily yellow below

the roofline, and that bears the plainly visible words "School Bus" on the front and rear. The term includes a public, private, or parochial vehicle that meets this description."

SECTION 4. Section 3 of this act is effective August 1, 2007 and applies to all school buses acquired on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 924:
School Bus Safety Act Correction

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 15, 2007
Introduced by:	Sen. Brunstetter	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S924-CSTC		Committee Counsel

SUMMARY: Senate Bill 924 would remove the element of serious bodily injury from a felony violation of G.S. 20-217, and would change the definition of school bus to require the words "School Bus" to be written in plainly visible letters and that buses be painted yellow.

CURRENT LAW: G.S. 20-4.01(27)d4. defines a "school bus" as a vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day. The vehicle must be equipped with:

- Alternately flashing red lights on the front and rear,
- A mechanical stop signal, and
- A sign bearing the words "School Bus" on the front and rear in letters at least 8 inches in height.

This definition applies to public, private, or parochial vehicles that meet the description.

G.S. 20-217 requires motor vehicles to stop when a school bus is displaying its mechanical stop signal or flashing red lights and is stopped for the purpose of receiving or discharging passengers, unless the driver is traveling in the opposite direction on a divided roadway from a school bus stopped across the dividing space or physical barrier. The requirement to stop applies only in the event that the school bus bears on the front and rear a plainly visible sign containing the words "school bus." Violation of the section is a Class 1 misdemeanor unless the driver willfully strikes any person and causes serious bodily injury to that person, which is a Class I felony.

BILL ANALYSIS:

Section 1: Would remove the requirement in G.S. 20-217(g) that serious bodily injury be caused to the person in order for the violation to be a Class I felony.

Section 2: Would remove the requirement in the definition of "school bus" in G.S. 20-4.01(27)d4. that the words "School Bus" be displayed in letters at least 8 inches high. Would require that the words "School Bus" be plainly visibly on the front and rear of the bus.

Section 3: Would add a new requirement in the definition of "school bus" in G.S. 20-4.01(27)d4. that the vehicle be painted primarily yellow below the roofline of the bus.

EFFECTIVE DATE: Section 3 of the bill would become effective August 1, 2007 and would apply to all school buses acquired on or after that date. The remainder of the bill would become effective when it becomes law.

BACKGROUND:

The State Board of Education is required under G.S. 115C-240(c) to adopt rules and regulation with reference to the construction, equipment, color and maintenance of school buses for public school transportation systems. These regulations currently require that public school buses be painted with National School Bus Yellow polyurethane paint. (2006 Type-C School Bus Specifications) These regulations do not apply to private and parochial school buses, however.

S0924e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 290

Short Title:	Amend Speeding to Elude Arrest Statute.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary 1 (Civil).	

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SEIZURE OF ANY VEHICLE USED TO FELONIOUSLY FLEE OR FELONIOUSLY ATTEMPTING TO ELUDE A LAW ENFORCEMENT OFFICER IN THE PERFORMANCE OF THE OFFICER'S OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5 is amended by adding a new subsection to read:

"**§ 20-141.5. Speeding to elude arrest.**

...

(b2) Any vehicle involved in a violation of subsection (a) of this section, if subsections (b) or (b1) are applicable to the offense, shall be declared contraband and subject to seizure and summary forfeiture to the State.

..."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 290
PROPOSED COMMITTEE SUBSTITUTE S290-CSTC-30 [v.3]

5/14/2007 5:41:27 PM

Short Title: Amend Speeding to Elude Arrest Statute. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SEIZURE OF ANY VEHICLE USED TO FELONIOUSLY FLEE OR FELONIOUSLY ATTEMPTING TO ELUDE A LAW ENFORCEMENT OFFICER IN THE PERFORMANCE OF THE OFFICER'S OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5 is amended by adding a new subsection to read:

"**§ 20-141.5. Speeding to elude arrest.**

...

(b2) Any vehicle involved in a violation of subsection (a) of this section, if subsections (b) or (b1) are applicable to the offense, shall be declared contraband and subject to seizure and summary forfeiture to the State. Any vehicle subject to forfeiture under this subsection shall be forfeited pursuant to the provisions of G.S. 14-86.1.

..."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 290:
Amend Speeding to Elude Arrest Statute

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 15, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S290-CSTC-30[v.3]		Committee Counsel

SUMMARY: ***Senate Bill 290 would provide for forfeiture of vehicles used in felonious speeding to elude arrest.***

The PCS provides that the process for forfeiture will be pursuant to G.S. 14-86.1.

CURRENT LAW: G.S. 20-141.5(a) makes it unlawful for an individual to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer. G.S. 20-141.5(b) makes violation of G.S. 20-141.5(a) a Class H felony if 2 or more of the following aggravating factors are present at the time the speeding to elude arrest occurs occurs:

- Speeding in excess of 15 miles per hour over the legal limit.
- Driving while impaired due to consumption of an impairing substance or a blood alcohol concentration of more than .14.
- Reckless driving.
- Negligent driving leading to an accident causing property damage in excess of $1,000 or personal injury.
- Driving while license is revoked.
- Driving in excess of the posted speed limit during the hours the speed limit is in effect in a school or work zone.
- Passing a stopped school bus.
- Driving with a child under 12 in the vehicle.

G.S. 20-141.5(b1) also makes violation of G.S. 20-141.5(a) a Class H felony if the violation is the proximate cause of the death of a person, and a Class E felony when a violation of G.S. 20-141.5(b) is the proximate cause of the death of a person.

G.S. 14-86.1 provides for the seizure and forfeiture of vehicles used in committing larceny and certain other crimes. Exceptions to forfeitures under this statute include:

- The vehicle was unlawfully in the possession of a person other than the owner.
- The violation involved was not a felony.
- A vehicle encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of and did not consent to the violation.
- The owner did not know or did not have reason to believe the vehicle was being used in the commission of the violation.
- The trial judge in the criminal proceeding determines that the forfeiture is inappropriate.

Vehicles forfeited under this section may be retained by the custodial law-enforcement agency for official use, transferred to the Department of Justice or Department of Crime Control and Public Safety, or sold as surplus property and the proceeds paid to the school fund in the county where the vehicle was seized.

BILL ANALYSIS: Senate Bill 290 would add a new subsection to G.S. 20-141.5 which would permit vehicles involved in felony violations of subsection (a), speeding to elude arrest, to be declared contraband and subject to seizure and summary forfeiture to the State, under the forfeiture procedure set out in G.S. 14-86.1.

EFFECTIVE DATE: This bill would become effective December 1, 2007, and would apply to offenses committed on or after that date.

S0290e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1326

Short Title:	Consistency/Waiver of Governmental Immunity.	(Public)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CONSISTENCY IN WAIVER OF IMMUNITY BY LOCAL GOVERNMENT BY TREATING PARTICIPATION IN RISK POOLS AND TRUSTS FOR PAYMENT OF LIABILITY CLAIMS BY SCHOOL BOARDS LIKE PARTICIPATION IN OTHER GOVERNMENTAL RISK POOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-23-1 reads as rewritten:

"**§ 58-23-1. Short title; definition.**

This Article shall be known and may be cited as the Local Government Risk Pool Act. As used in this Article, "local government" means any county, city, local board of education, or housing authority located in this State."

SECTION 2. G.S. 115C-42 reads as rewritten:

"**§ 115C-42. Liability insurance and immunity.**

Any local board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section shall be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this ~~State~~ State, including the North Carolina School Boards Trust, or by a qualified insurer as determined by the Department of ~~Insurance~~ Insurance or by a local government risk pool, and shall by its terms adequately insure the local board of education against liability for damages by reason of death or injury to person or property proximately caused by the negligent act or torts of the agents and employees of said board of education or the agents and employees of a particular school in a local

administrative unit when acting within the scope of their authority. The local board of education shall determine what liabilities and what officers, agents and employees shall be covered by any insurance purchased pursuant to this section. Any company or corporation which enters into a contract of insurance as above described with a local board of education, by such act waives any defense based upon the governmental immunity of such local board of education.

Every local board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a local board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of governmental, municipal or discretionary function of such local board of education if, and to the extent, such local board of education has insurance coverage as provided by this section.

Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any local board of education of any defense whatsoever to any such action for damages or to restrict, limit, or otherwise affect any such defense which said board of education may have at common law or by virtue of any statute; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said local board of education or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A local board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon: Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus, or school transportation service vehicle drivers, while driving school buses and school transportation service vehicles when the operation of such school buses and service vehicles is paid from the State Public School Fund."

SECTION 3. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1326
PROPOSED COMMITTEE SUBSTITUTE S1326-CSST-50 [v.1]

5/9/2007 8:31:13 PM

Short Title: Consistency/Waiver of Governmental Immunity. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CONSISTENCY IN WAIVER OF IMMUNITY BY LOCAL GOVERNMENT BY TREATING PARTICIPATION IN RISK POOLS AND TRUSTS FOR PAYMENT OF LIABILITY CLAIMS BY SCHOOL BOARDS LIKE PARTICIPATION IN OTHER GOVERNMENTAL RISK POOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-23-1 reads as rewritten:

"**§ 58-23-1. Short title; definition.**

This Article shall be known and may be cited as the Local Government Risk Pool Act. As used in this Article, "local government" means any county, city, local board of education, or housing authority located in this State."

SECTION 2. G.S. 115C-42 reads as rewritten:

"**§ 115C-42. Liability insurance and immunity.**

Any local board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section shall be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this ~~State~~ State, including the North Carolina School Boards Trust, or by a qualified insurer as determined by the Department of ~~Insurance~~ Insurance or by a local government risk pool, and shall by its terms adequately insure the local board of education against liability for damages by reason of death or injury to person or property proximately caused by the negligent act or torts of the agents and employees of

said board of education or the agents and employees of a particular school in a local administrative unit when acting within the scope of their authority. The local board of education shall determine what liabilities and what officers, agents and employees shall be covered by any insurance purchased pursuant to this section. Any company or corporation which enters into a contract of insurance as above described with a local board of education, by such act waives any defense based upon the governmental immunity of such local board of education.

Every local board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a local board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of governmental, municipal or discretionary function of such local board of education if, and to the extent, such local board of education has insurance coverage as provided by this section.

Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any local board of education of any defense whatsoever to any such action for damages or to restrict, limit, or otherwise affect any such defense which said board of education may have at common law or by virtue of any statute; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said local board of education or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A local board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon: Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus, or school transportation service vehicle drivers, while driving school buses and school transportation service vehicles when the operation of such school buses and service vehicles is paid from the State Public School Fund."

SECTION 3. This act becomes effective July 1, 2009.

SENATE BILL 1326:
Consistency/Waiver of Governmental Immunity

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 14, 2007
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S1326-CSST-50		Committee Counsel

SUMMARY: ***Senate Bill 1326 would treat participation in a risk pool for payment of liability claims by local school boards like participation in other governmental risk pools by counties and cities and other local government entities.***

[As introduced, this bill was identical to H1451, as introduced by Reps. Ross, Hall, Walend, which is currently in House Judiciary I.]

CURRENT LAW:

Under the current law, local governments are authorized but not required to purchase insurance. The purchase of liability insurance waives a local government's immunity for negligence arising out of the exercise of a governmental function. Not all types of coverage mechanisms constitute insurance for purposes of waiving immunity. Currently, the only types of coverage that constitute insurance for purposes of waiving immunity are:

- Liability coverage by a company licensed to execute insurance in North Carolina, or private insurance
- A local government risk pool where the risk is shared by two or more local governments. For the purpose of creating a local government risk pool, the term local government is defined to mean any county, city, or housing authority.

Additionally, the purchase of insurance waives immunity only to the extent of insurance coverage.

Like other units of local government, local school boards are authorized to secure liability insurance so as to waive their immunity for liability for certain negligent acts of their employees. G.S. 115C-47(25). Local school boards are authorized and empowered to waive its governmental immunity from liability, but are not specifically authorized to participate in insurance risk pools. G.S. 115C-42.

BILL ANALYSIS:

Section 1. The pcs would define, for the purpose of creating an insurance risk pool, a local government to include a local board of education.

Section 2. The pcs would specifically authorize local boards of education to participate in local government risk pools and thereby waive their governmental immunity.

EFFECTIVE DATE: Effective July 1, 2009.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — After Session — May 15, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dewey Hudson	DA - 4
Susan Doyle	DA - 11
John Snyder	DA - 20B
Jim Woodall	DA - 15B
Bo Hemphill	McGuire Woods
Jonathan Dodd	NCGA Staff
Thomas Moore	Judicial Watch
Judy Bunger	The Children's Center for Hospice & End of Life Care
Jamal Jones	NCHA
Jere Royall	NC Family Policy Council

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — After Session — May 15, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Frank Barnes	Chapel Hill
Ann Barnes	Chapel Hill
Ron Moore	Dist. Atty 28th
Tom Keith	Dist Atty - Forsyth - 21st Dist
Patrick Buffkin	Nelson Mullins
Tim Moore	NCDOC
Tracy Little	NC DOC
Robert Lee Gary	NC DOC

SENATE JUDICIARY I COMMITTEE
(Civil)

May 17, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Thursday, May 17 in Room 1027 of the Legislative Building. s present were Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Vice Chair R. C. Soles, Members Senators Charlie Albertson, Andrew Brock, Harry Brown, Pete Brunstetter, Janet Cowell, David Hoyle, Ellie Kinnaird, Vernon Malone, Floyd McKissick, Tony Rand, Richard Stevens and Jerry Tillman.

Chairman Nesbitt called the meeting to order.

The following bills were before the Committee:

Senate Bill 301 (Expunge DWI Civil Revocation). Senator Kinnaird was recognized to speak on the bill. A Proposed Committee Substitute was distributed to the members and upon a motion by Sen. Kinnaird, the bill was adopted for consideration.

Staff Counsel, Hal Pell, said the bill would provide that a person who has had a charge expunged from court records would also have any civil driver's license revocation due to the offense expunged from the Department of Motor Vehicle records.
Senator Clodfelter moved to give the PCS a favorable report, unfavorable to original bill and the motion passed.

Senate Bill 1204 (New Civil Penalties for Emissions Violations). Senator Soles was asked to chair the meeting as Senator Nesbitt was recognized for SB 1204. Counsel, Kara McCraw, gave an analysis of the bill. She said it would eliminate the current civil penalties for emissions violations and instead require a penalty of:

- $25 for failure to inspect a covered vehicle within four months of the required date.
- $100 for tampering with an emissions control device.
- $200 for incorrectly the county of registration to avoid inspection.
-

Senator Clodfelter asked if compliance with US APA was a problem. Mr. Mike Abraczinskas with the NC DENR-DAQ said that his division had no problem with the bill. Senator Rand moved for a favorable report and that the bill is re-referred to the Senate Finance Committee. His motion passed.

Senate Bill 1259 ((No Liability/Water Meets Water Standards). Senator Rand was recognized to speak on SB 1259. He presented a Proposed Committee Substitute to the committee and moved that it be adopted for consideration. The motion passed
With little discussion, Senator Hoyle moved for a favorable report. Senator Rand said the bill would provide that a provider of water is not an insurer of the quality of the water or deemed to provide any warranty under the Uniform Commercial Code if the water supplied meets or exceeds the enforceable standards of the Safe Drinking Water Act. Senator said the bill addressed a problem that City of Fayetteville experienced when it was sued by a laundry because there was rust in the water.

Senator Hoyle moved to give the PCS for SB 1259 a favorable report, unfavorable as to original bill and the motion passed.

Senate Bill 586 (Tort Claims Limit Increased). Senator Soles chaired the committee as Senator Nesbitt was recognized for SB 586. A Proposed Committee Substitute was distributed and adopted from a motion by Senator Hoyle. Senator Rand had determined tha the bill should be referred to the Senate Appropriations Committee. Senator Kinnaird moved for a favorable report for the PCS, unfavorable to the original bill. Discussion followed. Senator Clodfelter asked if the bill would impact local governments and was informed by Committee Counsel, Erika Churchill that it would not. Senator McKissick was bothered by the effective date of the bill. Senator Kinnaird's motion was before the Committee and passed. The bill is referred to the Senate Appropriations Committee.

Senate Bill 1077 (Regulation of Juvenile Discovery Orders). Senator Kinnaird was recognized for SB 1077 and moved that a Proposed Committee Substitute be adopted for consideration. The motion carried. Erika Churchill, Committee Counsel, explained that the original bill enacts new GS 7B-701 allowing parents, custodians, or guardian (or their attorney) to seek discovery of information in "the Department's" possession. It requires a parent, custodian, or guardian seeking discovery of listed information, including statements made by the individual, the juvenile, or potential witness, or physical evidence, to make a written request to the Department before filing a motion with the Court. The Department would have three business days after receiving the request to make the information available for review and 10 business days to comply with requests for the copies of any reproducible material made after examining the material.

Ms. Churchill said the PCS completely rewrites the proposed GS 7B-701 so that it now governs access of information in the possession of the director of a county department of social servicesin a pending petition. The statute sets out the process for a parent or the parent's attorney to see access to information and the information to which the director may provide access.

Discussion followed. Senator said the bill is needed and moved favorable report to the PCS, unfavorable to original bill. The motion carried.

Senate Bill 660 (Appointment/Removal of Public Defenders). Senator Rand was recognized to present SB 660 to the Committee. He said the bill would change the appointing authority for public defenders from the senior resident superior court judge of the district to the Commission on Indigent Defense Services, after consultation with the senior resident superior court judge and the chief district court judge. Raleigh Attorney, Joseph Cheshire was recognized to speak and supported the bill. The bill was carried over.

The meeting adjourned at 11:00 a.m.

Copies of Senate Bill 301, the Proposed Committee Substitute for SB 301, a Bill Analysis for the PCS to SB 301, Senate Bill 1204, a Bill Analysis for SB 1204, Senate Bill 1259, a Bill Analysis for SB 1259, a Proposed Committee Substitute for SB 1259, Senate Bill 586, a Committee Substitute for SB 586, a Legislative Fiscal Note for SB 586, Senate Bill 1077, a Proposed Committee Substitute for SB 1077, a Bill Digest for SB 1077, Senate Bill 660, and a Bill Analysis for SB 660 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 6A, 6B, 7, 8, 9, 10, 11, 12, 13 and 14 respectively.

Respectfully submitted,

Senator Martin l. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 301

Short Title:	Expunge DWI Civil Revocation.	(Public)
Sponsors:	Senators Kinnaird; Kerr and Soles.	
Referred to:	Judiciary I (Civil).	

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT RECORDS OF A CIVIL REVOCATION OF DRIVERS LICENSES SHALL BE EXPUNGED FROM AN INDIVIDUAL'S DRIVING RECORD IF THE UNDERLYING CRIMINAL CHARGE IS EXPUNGED PURSUANT TO ARTICLE 5 OF CHAPTER 15A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement ~~agencies~~agencies, including the Division of Motor Vehicles, bearing record of the same to expunge their records of the ~~conviction.~~conviction or a civil revocation of a drivers license as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation."

SECTION 2. G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement ~~agencies~~agencies, including the Division of Motor Vehicles, bearing record of the same to expunge their records of the ~~entries.~~entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The sheriff,

chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging these records shall not be taxed against the petitioner."

SECTION 3. This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S **D**

SENATE BILL 301
PROPOSED COMMITTEE SUBSTITUTE S301-CSRK-35 [v.3]

5/16/2007 12:22:20 PM

Short Title: Expunge DWI Civil Revocation. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT RECORDS OF A CIVIL REVOCATION OF DRIVERS LICENSES SHALL BE EXPUNGED FROM AN INDIVIDUAL'S DRIVING RECORD IF THE UNDERLYING CRIMINAL CHARGE IS EXPUNGED PURSUANT TO ARTICLE 5 OF CHAPTER 15A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement ~~agencies~~ agencies, including the Division of Motor Vehicles, bearing record of the same to expunge their records of the ~~conviction.~~conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation."

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underlying charge being expunged. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging these records shall not be taxed against the petitioner."

SECTION 3. This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 301:
Expunge DWI Civil Revocation

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 16, 2007
Introduced by:	Sen. Kinnaird	**Summary by:**	Hal Pell
Version:	PCS to First Edition S301-CSRK		Committee Co-Counsel

SUMMARY: ***This act would provide that a person who has had a charge expunged from court records would also have any civil driver's license revocation due to the offense expunged from Department of Motor Vehicle records. The act becomes effective October 1, 2007, and applies to offenses committed on or after that date.***

BILL ANALYSIS: This act provides that if a person has a criminal charge expunged from court records, the record of any civil driver's license revocation resulting from the charge would also be expunged from the Department of Motor Vehicle records. However, if the person commits an offense based upon the civil revocation, *e.g.*, driving while license revoked, the new charge would not be expunged. The expunction provision would not apply to a civil revocation based upon a refusal to submit to a sobriety test.

EFFECTIVE DATE: The act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1204

Short Title:	New Civil Penalties for Emissions Violations.	(Public)
Sponsors:	Senators Nesbitt; Atwater, Bingham, Boseman, Clodfelter, Goss, Graham, Hartsell, Hoyle, Kerr, Queen, Snow, Soles, Stevens, and Tillman.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH NEW CIVIL PENALTIES FOR EMISSIONS VIOLATIONS BASED ON THE TYPE OF VIOLATION THAT HAS OCCURRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-183.8A reads as rewritten:

"**§ 20-183.8A. Civil penalties against motorists for emissions violations.**

The Division shall assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

(1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part. The civil penalty for a violation of this subdivision is twenty-five dollars ($25.00).

(2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly. The civil penalty for a violation of this subdivision is one hundred dollars ($100.00).

(3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle. The civil penalty for a violation of this subdivision is two hundred dollars ($200.00).

~~The amount of penalty is one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and two hundred fifty dollars ($250.00) if the vehicle is a 1981 or newer model vehicle.~~ As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this section has been paid."

SECTION 2. This act becomes effective July 1, 2007.

SENATE BILL 1204:
New Civil Penalties for Emissions Violations

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 17, 2007
Introduced by:	Sen. Nesbitt	**Summary by:**	Kara McCraw
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1204 would eliminate the current civil penalties for emissions violations and instead require a penalty of:

- *$25 for failure to inspect a covered vehicle within four months of the required date.*
- *$100 for tampering with an emissions control device.*
- *$200 for incorrectly stating the county of registration to avoid inspection.*

CURRENT LAW: Under G.S. 20-183.2(b), vehicles meeting certain requirements required to be registered in emissions counties are subject to emissions inspections. G.S. 20-183.8A provides a civil penalty of $100.00 for pre-1981 vehicles or $250.00 for 1981 or later vehicles if the person owning or leasing a vehicle subject to an emissions inspection does any of the following:

1. Fails to have the vehicle inspected within 4 months after the required date.
2. Instructs or allows tampering with an emissions control device so that the device is inoperative or fails to work properly.
3. Incorrectly states the county where the vehicle is registered to avoid an emissions inspection.

A vehicle registration may not be renewed until a penalty imposed under the section has been paid.

G.S. 20-183.5 provides for waivers for vehicles that fail emissions tests if certain criteria, including a minimum expenditure on repairs, are met.

BILL ANALYSIS: Senate Bill 1204 would eliminate the fee variance between vehicles based on age, and would impose differing civil penalties for the three emissions violations set out under G.S. 20-183.8A, as follows:

1. $25 penalty for failure to inspect a covered vehicle within four months of the required date.
2. $100 penalty for instructing or allowing tampering with an emissions control device so that the device is inoperative or fails to work properly.
3. $200 penalty for incorrectly stating the county where the vehicle is registered to avoid an emissions inspection.

The bill would not change the requirement that a vehicle registration may not be renewed until the penalty imposed under the section has been paid.

EFFECTIVE DATE: The act would become effective July 1, 2007.

BACKGROUND: The Environmental Protection Agency, under 40 C.F.R. § 51.361, requires that states must design enforcement programs to comply with I/M (Inspection & Maintenance) programs, and that the programs must include a penalty system structured to deter non-compliance with the registration requirement through the use of mandatory minimum fines (civil monetary penalties) constituting a meaningful deterrent and through a requirement that compliance be demonstrated before a case can be closed. North Carolina uses a registration denial enforcement program which has been approved by EPA.

S1204e1-SMTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1259

Short Title:	No Liability/Water Meets Water Standards.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROVIDER OF WATER SERVICES WHO SATISFIES THE STANDARDS OF THE NORTH CAROLINA DRINKING WATER ACT IS NOT AN INSURER OF THE QUALITY OF WATER PROVIDED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-315 is amended by adding a new subsection to read:

"(g) A provider of water services regulated under this Article shall not be deemed to be an insurer of the quality of the water provided, so long as the water meets or exceeds the enforceable standards of the Safe Drinking Water Act and shall not be deemed to provide any warranty under the Uniform Commercial Code, including, but not limited to, an implied warranty of merchantability or an implied warranty for a particular purpose."

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

SENATE BILL 1259:
No Liability/Water Meets Water Standards

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 16, 2007
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1259 provides that a provider of water of that meets the standards of the Safe Drinking Water Act is not an insurer of the quality of the water and is not deemed to provide any warranty under the Uniform Commercial Code.

CURRENT LAW: Generally, public water systems are held to the standards of Article 10 of Chapter 130A, cited as the North Carolina Drinking Water Act. The rules establishing the standards are set the by Department of Environment and Natural Resources. The public water systems, by definition, are selling water. Water is a good for sale under the Uniform Commercial Code. The Uniform Commercial Code, Chapter 25 of the General Statutes, established four types of warranties:

1. The warranty of title. – The seller of the goods warrants that the title transferred is good, that the transfer is rightful, and there are no liens or encumbrances outstanding of which the buyer is unaware.
2. The implied warranty of merchantability. – For the sale by a merchant who deals in the goods of the kind sold, there is an implied warranty that the goods are merchantable. Food and beverage is subject to this type of implied warranty.
3. The implied warranty of fitness for a particular purpose. – For a sale in which the seller has reason to know the particular purpose for which the goods are to be used and that the buyer is relying on the seller's skill and judgment and the buyer does rely on the seller's skill and judgment, there is created an implied warranty of fitness for a particular purpose.
4. Express warranties. – For a sale in which an affirmation of fact or promise made by the seller becomes a part of the basis of the sale, there is created an express warranty.

BILL ANALYSIS: The bill would provide that a provider of water is not an insurer of the quality of the water or deemed to provide any warranty under the Uniform Commercial Code if the water supplied meets or exceeds the enforceable standards of the Safe Drinking Water Act.

EFFECTIVE DATE: Effective when it becomes law.

S1259e1-SMST

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1259
PROPOSED COMMITTEE SUBSTITUTE S1259-CSST-57 [v.1]

5/16/2007 10:02:10 PM

Short Title: No Liability/Water Meets Water Standards. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROVIDER OF WATER SERVICES WHO SATISFIES THE STANDARDS OF THE NORTH CAROLINA DRINKING WATER ACT IS NOT AN INSURER OF THE QUALITY OF WATER PROVIDED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-315 is amended by adding a new subsection to read:

"(g) A provider of water services regulated under this Article shall not be deemed to be an insurer of the quality of the water provided, so long as the water meets or exceeds the enforceable standards of this Article and shall not be deemed to provide any warranty under Article 2 of Chapter 25 of the General Statutes, including an implied warranty of merchantability or an implied warranty of fitness for a particular purpose."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 586*

Short Title:	Tort Claims Limit Increased.	(Public)
Sponsors:	Senators Nesbitt; Berger of Franklin, Kerr, Kinnaird, Queen, Rand, Snow, and Soles.	
Referred to:	Judiciary I (Civil).	

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-299.2 reads as rewritten:

"**§ 143-299.2. Limitation on payments by the State.**

(a) The maximum amount that the State may pay cumulatively to all claimants on account of injury and damage to any one person arising out of any one occurrence, whether the claim or claims are brought under this Article, or Article 31A or Article 31B of this Chapter, shall be ~~five hundred thousand dollars ($500,000),~~ one million dollars ($1,000,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c).

(b) The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

SECTION 2. This act applies with respect to torts committed on or after the date this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 2

SENATE BILL 586*
Judiciary 1 (Civil) Committee Substitute Adopted 5/22/07

Short Title: Tort Claims Limit Increased. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-299.2 reads as rewritten:

"**§ 143-299.2. Limitation on payments by the State.**

(a) The maximum amount that the State may pay cumulatively to all claimants on account of injury and damage to any one person arising out of any one occurrence, whether the claim or claims are brought under this Article, or Article 31A or Article 31B of this Chapter, shall be ~~five hundred thousand dollars ($500,000),~~ one million dollars ($1,000,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c).

(b) The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

SECTION 2. This act becomes effective July 1, 2007, and applies with respect to torts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Fiscal Note

BILL NUMBER: Senate Bill 586 (Second Edition)

SHORT TITLE: Tort Claims Limit Increased.

SPONSOR(S): Senator Nesbitt

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
REVENUES:					
EXPENDITURES:					
Department of Justice	$81,828	$278,909	$278,909	$278,909	$278,909
Non-recurring	*$10,284*	-	-	-	-
Recurring	*$71,544*	*$278,909*	*$278,909*	*$278,909*	*$278,909*
Auto Liability Insurance Premium*	$1,129,914	$1,129,914	$1,129,914	$1,129,914	$1,129,914
Department of Public Instruction	Amount cannot be determined.				
Department of Transportation	Amount cannot be determined.				
Other State Agencies	Amount cannot be determined.				
POSITIONS (cumulative):					
Department of Justice	1	3	3	3	3

** Across all State agencies, departments, and institutions*

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice, Legal Division – Tort Claim Section; Industrial Commission; Department of Public Instruction; Department of Transportation; all other state agencies, departments, and institutions.

EFFECTIVE DATE: July 1, 2007

BILL SUMMARY: S.B. 586 would increase State tort claim liability from $500,000 to $1,000,000.

ASSUMPTIONS AND METHODOLOGY:

General

Based on information provided by the Department of Justice, Department of Insurance, and Industrial Commission, Fiscal Research anticipates that this proposal could have three principal effects:

1) Increase the amount paid by State agencies, departments, and institutions for tort claim awards and/or settlements;
2) Where applicable, increase liability insurance premiums for State agencies, departments, and institutions.
3) *Potentially* increase the number of claims filed, and consequently, the workload and staffing demands for claim processing and case disposition.

However, historical information concerning actual claim dispositions, payments (awards/ settlements), and insurance coverage is not readily available.[1] Thus, Fiscal Research does not have an accurate estimate of annual fiscal impact.

Awards/Settlements:

The Department of Justice estimates that approximately 632 cases have been resolved since 2001, following the last tort claim liability limit increase.

- Of the total cases filed since 2001, 392 were either settled or dismissed
- Since 2001, 240 cases have been litigated, with an estimated award rate of 50 percent [2]
- There are 75 cases still pending from prior to 2001, and 609 cases pending from after 2001

Approximately 143 (23%) of all pending cases involve estimates of high damage – mostly for death or serious injury (medical expenses exceeding $100,000). The Department indicates that these are the most likely to be litigated.

For illustrative purposes, assuming that 50 percent (70) of these cases result in maximum awards under the proposed limit, the increase in total State liability could be $35 million. *This figure constitutes a conservative ceiling estimate across all agencies.* It is not known how many awards would occur, or when they would actually be paid out. According to DOJ, the primary impact of any increase in award or settlement amounts would be assumed by the Department of Public Instruction and the Department of Transportation.[3]

The Tort Claims Section does not record annual data on the amount requested per claim; or the amount settled and paid for each claim. Therefore, FRD is unable to estimate the potential impact of this proposal for future claims and payments (e.g. the number of claims, the extent to which

[1] Specific, historical case records distinguishing case disposition are not readily available, especially with respect to non-litigated cases (settlements/dismissals), actual awards, and settlement payments. Individual case information is archived.

[2] According to the Department of Justice, the average duration from claim filing to case disposal is five years, and approximately 48 cases are tried per year. DOJ estimates that 50% of litigated cases result in plaintiff award.

[3] DOJ indicates that a higher case volume is experienced by DPI and DOT; DOT awards/settlements are deducted from the Highway Fund.

settlement or award amounts would increase, or the extent to which purchased liability insurance might provide coverage).

Liability Insurance:

Under Office of State Budget and Management policy, agencies and departments are responsible for tort claim settlements and awards up to the limit specified by G.S. 143-299.2, and must pay the claims using available funds. Consequently, to the extent that purchased liability insurance does not cover liability, agencies will bear the burden of identifying funds.

There are certain exceptions in which the purchase of liability insurance is authorized: 1) G.S. 58-31-50 requires every State department, agency, or institution to acquire motor vehicle liability insurance for State-owned vehicles under its control; 2) G.S. 116-219 permits the University of North Carolina to purchase malpractice insurance for system healthcare providers; and, 3) malpractice insurance for other health care providers in State government, primarily for the Department of Health and Human Services and the Department of Correction.

Presently, the Department of Insurance estimates that if the tort claim limit is increased to $1 million, annual premiums for the State's motor vehicle liability insurance plan could increase by approximately $1.13 million (8-10% increase, *cumulative across all agencies*). Accordingly, the Department of Public Instruction, Department of Transportation, and any other agency with control of State-owned vehicles would become subject to the rate increase.[4] At this time, no other estimates are available. Because employees of State agencies and departments are covered by excess liability insurance up to $5 million in excess of the current limit, increasing the limit is not expected to directly affect premium levels.

Processing and Disposition:

Department of Justice staff anticipate that increasing the tort claim limit will increase future workload, and estimate that additional attorneys, claims adjusters, and clerical staff will be needed for case disposition. However, the number of claims filed with both the Industrial Commission and Department of Justice has varied annually since 1999. Thus, a clear association between an increased tort claim limit and rising caseloads cannot be established.

In 2000, when the tort claims limit increased to $500,000, the General Assembly funded two additional positions within the Department of Justice. Given this staffing increase, and the lack of reliable data to project future workload, the Fiscal Research Division revised the Department's recommendation for six additional positions, instead recommending that funding be provided initially for three total positions by FY 2008-09 – Tort Claims Adjuster, Attorney I, and Attorney II. Total costs for these positions are represented in the Fiscal Impact Table.

SOURCES OF DATA: Department of Justice – Legal Division, Tort Claims Section; Industrial Commission; Department of Insurance – Office of the State Fire Marshall, Risk Management Division.

TECHNICAL CONSIDERATIONS: It is unclear whether the proposed claim limit will apply to all claims submitted after the bill's effective date, or all claims settled after that date.

[4] Because the State motor fleet (Department of Administration) is receipt supported, the cost of any potential premium increase is expected to be diffused among fleet users.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Denise Thomas

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 30, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1077

Short Title:	Regulation of Juvenile Discovery Orders.	(Public)
Sponsors:	Senator Kinnaird.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REGULATE CERTAIN JUVENILE DISCOVERY ORDERS.

The General Assembly of North Carolina enacts:

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

"**§ 7B-701. Discovery of information in the Department's or guardian ad litem's possession by a respondent parent, custodian, or guardian in a pending case.**

(a) A parent, custodian, or guardian seeking discovery of any of the information listed in subsection (c) of this section shall, before filing any motion before the court, make a written request for discovery to the Department. Upon receiving a negative or unsatisfactory response from the Department, or upon the passage of three business days following the receipt of the discovery request without response, the parent, custodian, or guardian requesting discovery may file a motion for discovery pursuant to this Article.

(b) To the extent that discovery authorized in this Article is voluntarily made in response to the written request, the discovery is deemed to have been made under an order of the court.

(c) Within three business days of the receipt of a written request for discovery, the Department shall make available for review by the parent, custodian, or guardian's attorney or the parent, custodian, or guardian, if not represented by an attorney, the following material and information within the Department's possession:

(1) All written or oral statements of the parent, custodian, or guardian or the subject juvenile.

(2) All written or oral statements of any potential witnesses for the Department.

(3) All information, including reports, received from experts who have personally examined the requesting parent, custodian, or guardian or the subject juvenile or siblings of the subject juvenile.

(4) Any physical evidence together with the results of physical examinations, scientific tests, experiments, or comparisons.

(5) All papers, documents, photographs, or tangible objects that the Department may use at trial.

(6) All reports generated by Department officers or employees pertaining to the parent, custodian, or guardian, or the subject juvenile, including reports from prior investigations involving the parent, custodian, or guardian, the subject juvenile, or siblings of the subject juvenile.

(7) All material or information that tends to mitigate or negate the allegations against the parent, custodian, or guardian.

(d) The parent, custodian, or guardian's attorney or the parent, custodian, or guardian, if not represented by an attorney, may request a copy of any reproducible material or information after examination of the material and information provided by the Department. The Department shall comply with the request within 10 business days.

(e) The following shall not be disclosed absent an order granted under subsection (f) of this section:

(1) Health care information, including chemical dependency information, and drug testing regarding anyone other than the requesting parent, custodian, or guardian or the subject juvenile.

(2) Documents containing the names and addresses of foster parents, not previously disclosed to the parent, custodian, or guardians by the Department.

(3) The identity of the reporter, in conformance with G.S. 7B-302.

(f) A parent, custodian, or guardian whose request for discovery is not fully complied with by the Department may file a motion for an order compelling discovery. A motion for an order to compel discovery shall set forth how the Department was not in compliance with the request for discovery or why information protected by subsection (e) of this section should be disclosed.

(g) The Department may file a motion to deny discovery or permit a limited response. The motion shall set forth the reasons why the discovery should be denied or the response should be permitted to be limited or should be subject to conditions. The Department shall submit, for in camera inspection, the information and materials it seeks to protect. If, thereafter, the court enters an order granting relief under subdivision (3) of subsection (h) of this section, copies of the information and material submitted in camera shall be preserved for appellate review in the event of an appeal.

(h) The court shall hear and rule on a discovery motion within seven days after it is filed. Among other relief, the court may do any or all of the following:

(1) Grant the requested discovery and specify the time within which it shall be provided.

(2) Order appropriate sanctions for any clear misuse of discovery, arbitrary delay, or refusal to comply with a discovery request.

(3) Deny, limit, or set conditions on the requested discovery.

A discovery motion shall stay the response time under subsection (c) and subsection (d) of this section until the court rules on the motion.

(i) If the guardian ad litem for the juvenile takes a position aligned with the Department or fully contrary to the position of the parent, guardian, or custodian, this section shall apply to the guardian ad litem."

SECTION 2. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1077
PROPOSED COMMITTEE SUBSTITUTE S1077-CSST-58 [v.1]

5/16/2007 11:05:32 PM

Short Title: Regulation of Juvenile Discovery Orders. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REGULATE CERTAIN JUVENILE DISCOVERY ORDERS WITH RESPECT TO ABUSE, NEGLECT, AND DEPENDENCY PETITIONS.

The General Assembly of North Carolina enacts:

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

"**§ 7B-701. Access of information in the director's possession in a pending petition.**

(a) A parent seeking access to information in the department's possession in a pending petition must, before filing any motion before a judge, make a written request to the director to examine the documents, information and material set forth in subsection (c) of this section.

(b) To the extent that disclosure of information in the director's possession authorized in this Article is voluntarily made in response to a written request to examine by a parent, the disclosure is deemed to have been made under an order of the court.

(c) Within five business days of the receipt of a written request to examine, or when otherwise agreed upon by the requestor and the director, the director shall make available for review by the parent's attorney or the parent, if not represented by an attorney, the following documents, material and information within the director's possession:

(1) The record regarding the pending petition, including any information or reports received from experts who have personally examined the requesting parent or the juvenile and any physical evidence together with the results of physical examinations, scientific tests, experiments, or comparisons.

(2) Records regarding prior investigations involving the requesting parent, the juvenile, or siblings of the juvenile, if any.

(d) The parent's attorney or the parent, if not represented by an attorney, may a request a copy of any documents and any reasonably reproducible material after

examination of the documents, material and information provided by the director. The director must comply with the request within 10 business days.

(e) Except upon order of the court, none of the following may be disclosed:

(1) Health care information, including chemical dependency information, and drug testing regarding anyone other than the requesting parent or the juvenile.

(2) Documents containing the names and addresses of foster parents, not previously disclosed to the parent by the director.

(3) The identity of the person or institution making the report under G.S. 7B-301.

(f) A parent whose request to examine or request for copies is not satisfactorily complied with by the direcotor may file a motion for an order compelling discovery. A motion for an order to compel discovery shall set forth how the director was not in compliance with the request to examine, the request for copies, or why information protected by section (e) of this section should be disclosed.

(g) The director may file a motion to deny access or permit a limited response to the request to examine or request to reproduce documents, materials or information. The motion shall set forth the reasons why discovery should be denied or restricted. The director shall submit, for in camera inspection, the documents, information and materials the director seeks to protect. If, thereafter, the court enters an order granting relief under subsection (h)(3) of this section, the material submitted in camera must be available for appellate review in the event of an appeal.

(h) The court shall hear and rule on an access motion within seven days after it is filed. Among other relief, the court may:

(1) Grant the requested access and specify the time within which it must be provided.

(2) Order appropriate sanctions for any clear misuse of access or arbitrary delay or refusal to comply with an access request.

(3) Deny, restrict, or set conditions on the requested access.

(i) A motion under subsection (h) shall stay the response times under subsections (c) and (d) of this section until the court grants relief on the motion.

(j) Any request to examine not made by a parent at least 30 days prior to a scheduled court hearing shall not be the basis for a continuance of the hearing, absent a compelling reason.

(k) In the event the allegations in the pending case are against a non-parent custodian or guardian, the provisions of this article shall apply, except subdivision (c)(2) of this section."

SECTION 2. This act becomes effective October 1, 2007.

March 20, 2007

S 1077. REGULATION OF JUVENILE DISCOVERY ORDERS. Filed 3/20/07. *TO REGULATE CERTAIN JUVENILE DISCOVERY ORDERS.*

Enacts new GS 7B-701 allowing parents, custodians, or guardian (or their attorney) to seek discovery of information in "the Department's" possession. Requires a parent, custodian, or guardian seeking discovery of listed information, including statements made by the individual, the juvenile, or potential witness, or physical evidence, to make a written request to the Department before filing a motion with the court. The Department has three business days after receiving the request to make the information available for review and has 10 business days to comply with requests for copies of any reproducible material made after examining the material. If the Department does not respond in three days or the response is a denial or is unsatisfactory, the parent, custodian, or guardian may file a motion for discovery and the court must hear and rule on the motion within seven days after it is filed. Allows the Department to file a motion to deny discovery or permit a limited response. Prohibits the disclosure of the following information without an order: (1) health care information regarding anyone other than the requesting parent, custodian, or guardian, or the subject juvenile; (2) documents containing the names and address of foster parents if not previously disclosed; and (3) the identity of the reporter. The section also applies to a guardian ad litem taking a position aligned with the Department or contrary to the position of the parent, guardian, or custodian. Effective October 1, 2007.

Intro. by Kinnaird. GS 7B

May 22, 2007

S 1077. REGULATION OF JUVENILE DISCOVERY ORDERS. Filed 3/20/07. Senate committee substitute makes the following changes to 1st edition. Completely rewrites proposed GS 7B-701 so that it now governs access of information in the possession of the director of a county department of social services in a pending petition. The statute sets out the process for a parent or the parent's attorney to seek access to information and the information to which the director may provide access. The director has five business days after receiving the request to make the information available for review and has ten business days to comply with requests made after examining the material for copies of reproducible material. The statute sets out the process for a parent to file a motion to compel discovery or for the director to file a motion to deny or limit access. Provides that if the allegations in the pending case are against a non-parent custodian or guardian, the provisions of the statute apply to that person, except that the director is not required to make available for review any records regarding prior investigations involving the requestor, the juvenile, or the juvenile's siblings. Deletes provisions relating to guardians ad litem.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 660

Short Title:	Appointment/Removal of Public Defenders.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary 1 (Civil).	

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE APPOINTMENT OF PUBLIC DEFENDERS BY THE COMMISSION ON INDIGENT DEFENSE SERVICES AND TO PROVIDE FOR SUSPENSION OR REMOVAL OF A PUBLIC DEFENDER BY A TWO-THIRDS VOTE OF THE COMMISSION ON INDIGENT DEFENSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-498.7 reads as rewritten:

"**§ 7A-498.7. Public Defender Offices.**

(a) The following counties of the State are organized into the defender districts listed below, and in each of those defender districts an office of public defender is established:

Defender District	Counties
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans
3A	Pitt
3B	Carteret
10	Wake
12	Cumberland
14	Durham
15B	Orange, Chatham
16A	Scotland, Hoke
16B	Robeson
18	Guilford
21	Forsyth
26	Mecklenburg

27A	Gaston
28	Buncombe

After notice to, and consultation with, the affected district bar, senior resident superior court judge, and chief district court judge, the Commission on Indigent Defense Services may recommend to the General Assembly that a district or regional public defender office be established. A legislative act is required in order to establish a new office or to abolish an existing office.

(b) For each new term, and to fill any vacancy, public defenders shall be appointed from a list of not less than two and not more than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to rules adopted by the Commission on Indigent Defense Services. The appointment shall be made by the ~~senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-44.1 that includes the county or counties of the defender district for which the public defender is being appointed.~~ Commission on Indigent Defense Services after consultation with the senior resident superior court judge and chief district court judge. Public defenders shall be chosen by the Commission on the basis of training, experience, and other qualifications.

(c) A public defender shall be an attorney licensed to practice law in North Carolina and shall devote full time to the duties of the office. In lieu of merit and other increment raises paid to regular State employees, a public defender shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a public defender, appellate defender, assistant public or appellate defender, district attorney, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court.

(d) Subject to standards adopted by the Commission, the day-to-day operation and administration of public defender offices shall be the responsibility of the public defender in charge of the office. The public defender shall keep appropriate records and make periodic reports, as requested, to the Director of the Office of Indigent Defense Services on matters related to the operation of the office.

(e) The Office of Indigent Defense Services shall procure office equipment and supplies for the public defender, and provide secretarial and library support from State funds appropriated to the public defender's office for this purpose.

(f) Each public defender is entitled to assistant public defenders, investigators, and other staff, full-time or part-time, as may be authorized by the Commission. Assistants, investigators, and other staff are appointed by the public defender and serve at the pleasure of the public defender. Average and minimum compensation of assistants shall be as provided in the biennial Current Operations Appropriations Act. The actual salaries of assistants shall be set by the public defender in charge of the

office, subject to approval by the Commission. The Commission shall fix the compensation of investigators. Assistants and investigators shall perform such duties as may be assigned by the public defender.

(g) In lieu of merit and other increment raises paid to regular State employees, an assistant public defender shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a public defender, appellate defender, assistant public or appellate defender, district attorney, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court.

(h) The term of office of public defender appointed under this section is four years. ~~A public defender or assistant public defender may be suspended or removed from office, and reinstated, for the same causes and under the same procedures as are applicable to removal of a district attorney.~~A public defender may be suspended or removed from office for cause by a two-thirds vote of all of the members of the Commission on Indigent Defense Services. The Commission shall provide the public defender with timely written notice of the alleged causes and an opportunity for hearing before the Commission prior to taking any final action to remove or suspend the public defender, and the public defender shall be given written notice of the Commission's decision. The public defender may obtain judicial review of a suspension or removal by the Commission by filing a petition within 30 days of receiving notice of the decision with the Superior Court of Wake County. Review of the Commission's decision shall be heard on the record and not as a de novo review or trial de novo. The Commission shall adopt rules implementing this subsection.

(i) A public defender may apply to the Director of the Office of Indigent Defense Services to enter into contracts with local governments for the provision by the State of services of temporary assistant public defenders pursuant to G.S. 153A-212.1 or G.S. 160A-289.1.

(j) The Director of the Office of Indigent Defense Services may provide assistance requested pursuant to subsection (i) of this section only upon a showing by the requesting public defender, supported by facts, that the overwhelming public interest warrants the use of additional resources for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving a threat to public safety.

(k) The terms of any contract entered into with local governments pursuant to subsection (i) of this section shall be fixed by the Director of the Office of Indigent Defense Services in each case. Nothing in this section shall be construed to obligate the General Assembly to make any appropriation to implement the provisions of this section or to obligate the Office of Indigent Defense Services to provide the administrative costs of establishing or maintaining the positions or services provided for under this section. Further, nothing in this section shall be construed to obligate the Office of Indigent Defense Services to maintain positions or services initially provided for under this section."

SECTION 2. This act becomes effective July 1, 2007.

SENATE BILL 660: Appointment/Removal of Public Defenders

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 16, 2007
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 660 provides that appointment of public defenders by made the Commission on Indigent Defense Services and that suspension or removal of a public defender may be made by a 2/3 vote of that Commission.

CURRENT LAW:
Certain counties are organized into defender districts, and have public defenders. The public defenders are appointed by the senior resident superior court judge of the judicial district including that county. The public defender is appointed from a list of not less than two, or more than three, persons nominated by written ballot of the licensed attorneys in that district.
The term of the public defender is four years. The public defender or assistant public defender may be suspended or removed for the same causes and under the same procedure as for district attorneys. G.S. 7A-66 provides the following grounds of suspension or removal for district attorneys:

1. Mental or physical incapacity interfering with the performance of the duties which is, or is likely to become, permanent.
2. Willful misconduct in office.
3. Willful and persistent failure to perform the duties.
4. Habitual intemperance.
5. Conviction of a crime involving moral turpitude.
6. Conduct prejudicial to the administration of justice which brings the office into disrepute.
7. Knowingly authorizing or permitting an assistant district attorney to commit any act constituting grounds for removal, as listed above in 1-6.

The senior regular superior court judge of the district is to review or hear, or refer for review or hearing, any filing to suspend or remove a district attorney. The decision of the superior court judge is appealable to the Court of Appeals.

BILL ANALYSIS: The bill would change the appointing authority for public defenders from the senior resident superior court judge of the district to the Commission on Indigent Defense Services, after consultation with the senior resident superior court judge and the chief district court judge. The bill would also codify that public defenders are to be chosen by the Commission on the basis of training, experience, and other qualifications.
The bill also amends the procedure and grounds for suspension or removal of a public defender. The bill provides that a public defender may be suspended or removed for cause by a 2/3 vote of all the members of the Commission on Indigent Defense Services. The Commission would be required to provide the public defender with written notice of the alleged causes and an opportunity to be heard. Appeal is taken to the Superior Court of Wake County, and review of the Commission's decision is on the record.

EFFECTIVE DATE: July 1, 2007.
S0660e1-SMST

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — After Session — May 15, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Cheshire	IDS
Todd Barlow	NCATL
Tom Bennett	NCACDSS
Wendy C Sotolongo	IDS/ Office of Appellate Defender
Fred Bone	Bone & Asso.
Erin Kenney	NC Conservation Network
Christine B. Wunsche	106-Daily Bulletin
Scarlette Gardner	NC Medical Society
Adam Stein	Atty Chapel Hill
Melzer (Pat) Morgan	Comm. Indigent Defense Services Commission
Elizabeth Dalton	NCRMA

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — After Session — May 15, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gregory Thorpe	NCFB
John McAlister	NC Chamber
Mary Ann Talley	IDS
Mike Abraczinskas	NCDENR-DAQ
David Forrell	Van Winkle Blvd

SENATE JUDICIARY I COMMITTEE
(Civil)

May 22, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met three times on Tuesday, May 22 at 10:00 a.m., 2:00 p.m. and after the legislative session adjourned. A quorum was present at all three meetings.

Chairman Nesbitt called the 10:00 a.m. meeting to order.

The following bills were scheduled to be heard before the Committee at that meeting:

SB 8	**Expand Safe Zones/Schools Parks, Child Ctrs**	**Senator Boseman**
SB 17	**Up Penalties/Sex Offenses With Child Victim.**	**Senator Boseman**
SB 90	**Post-Adoption Contacts.**	**Senator Kinnaird**
SB 212	**Land-Use Permit Appeals.**	**Senator Kinnaird**
SB 290	**Amend Speeding to Elude Arrest Statute.**	**Senator Boseman**
SB 466	**Amend Concealed Weapons Law.**	**Senator Boseman**
SB 788	**DWI Sentencing.**	**Senator Hartsell**
SB 1009	**Discovery/DA Work Product & Confid. Informant.**	**Senator Rand**
SB 1081	**Expunge Nonviolent Crimes.**	**Senator Weinstein**
SB 1129	**Open Discovery/Access to Officers' Notes.**	**Senator Clodfelter**
SB 1130	**Broaden Open Discovery.**	**Senator Clodfelter**
SB 1131	**Grand Jury Reform/Prosecutorial Misconduct.**	**Senator Clodfelter**
SB 1271	**Firefighter/EMS Payroll Deductions.**	**Senator Snow**

Senator Nesbitt recognized Senator Boseman to speak on Senate Bill 290. She introduced William Walick – Assistant City Attorney and Police Attorney from Wilmington. He said that SB 290 would provide for forfeiture of vehicles used in felonious speeding to elude arrest. Seized vehicles would go to the school boards.

Senator Nesbitt made the observation that the bill had been before the committee before and the members of the committee did not feel that the change was necessary as it is already a felony to speed to elude arrest. Extensive Discussion followed. Senators Berger, Rand, Brown, Hoyle, Brock and Tillman all expressed concerns.

Senator Boseman moved for a favorable report and the motion failed.

Senator Nesbitt recognized Senator Kinnaird to present SB 212 to the Committee. A Proposed Committee Substitute was distributed to the members and adopted upon motion by Senator Kinnaird. Senator Kinnaird asked Mike Brough, an attorney from Chapel Hill, to make a comment on the bill. He told the members that the bill was "evolving," He said he works in the land-use area, working with several small municipalities and this legislation would standardize these procedures.

Kim Hibbert from the League of Municipalities told the members that the League did not have great concern with the legislation.

Senator Clodfelter inquired whether everyone involved in drafting the original bill had signed off on the language in the PCS. He said the goal of the original bill was to codify existing case law.

The bill was temporarily displaced.

Senator Kinnaird as the Chairman to take up Senate bill 90 so she could move to have a Proposed Committee Substitute adopted. The PCS was distributed to the committee and was adopted by unanimous vote. The bill was then displaced.

Senator Rand was recognized to present Senate Bill 1009. He moved to have the committee adopt a Proposed Committee Substitute and the motion passed. He said the legislation amends the discovery laws to provide the circumstances under which the State must disclose witness interview notes, and witness identifying information. The act is effective when it becomes law and would apply to pending cases.

Senator Nesbitt told Senator Rand that his District Attorney was concerned under the original bill that he could be called as a witness. Senator Rand said the bill was changed, but that he wouldn't have to submit any written statement unless it's materially different.

Senator Soles asked for clarification about the language on page 1, line 22 "outside the presence of a law enforcement office or investigatorial assistant".

Brad Bannon with the North Carolina Academy of Trial Lawyers was recognized for comment. He said the purpose was to clarify that if there is a law enforcement officer or investigatorial assistant present or if there isn't, then the general rule and the defense will receive a complete report of whatever statements are made at that point.

When there was no further discussion, Senator Rand moved to give the committee substitute for SB 1009 a favorable report, unfavorable to original bill and the motion passed.

The Sergeant at Arms was asked to find Senator Snow for a bill.

Senate Bill 466 was before the committee and Senator Boseman was recognized to speak on the bill. A Proposed Committee Substitute was distributed and Senator Boseman moved that it be adopted for consideration.

Marshall Williamson, a 27-year career police officer, now located in Wilmington, NC was recognized and spoke in favor of the bill.

Discussion followed. Committee Counsel, Kara McCraw, was asked to explain the PCS. She said SB 466 would add the following to the list of weapons unlawful to carry concealed: switchblade knife, ballistic knife, slingshot, blackjack, throwing star, oriental dart, air or gas operated pistol or gun, or objects similar in appearance to pistols or guns, whether capable of being fire or not. The bill would eliminate the requirement that the weapon not be a firearm from the defense of legitimate use.

Considerable discussion ensured and the bill was displaced.

The meeting adjourned at 11:05 a.m.

Copies of Senate Bill 290, a Proposed Committee Substitute for SB 290, a Bill Analysis for the PCS to SB 290, Senate Bill 212, a Proposed Committee Substitute for SB 212, a Bill Digest for SB 212, Senate Bill 90, a Proposed Committee Substitute for SB 90, a Bill Analysis for SB 90, Senate Bill 1009,a Proposed Committee Substitute for SB 1009, a Bill Analysis for the PCS to SB 1009, Senate Bill 466, a Proposed Committee Substitute for SB 466, and a Bill Analysis for the PCS to SB 466 are attached to these Minutes as Attachments 1, 2, 3, 4, 4A, 5, 6, 7, 8, 9, 9A, 10, 11, 12, and 13, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 290

Short Title:	Amend Speeding to Elude Arrest Statute.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary 1 (Civil).	

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SEIZURE OF ANY VEHICLE USED TO FELONIOUSLY FLEE OR FELONIOUSLY ATTEMPTING TO ELUDE A LAW ENFORCEMENT OFFICER IN THE PERFORMANCE OF THE OFFICER'S OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5 is amended by adding a new subsection to read:

"**§ 20-141.5. Speeding to elude arrest.**

...

(b2) Any vehicle involved in a violation of subsection (a) of this section, if subsections (b) or (b1) are applicable to the offense, shall be declared contraband and subject to seizure and summary forfeiture to the State.

..."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 290
PROPOSED COMMITTEE SUBSTITUTE S290-CSTC-30 [v.3]

5/14/2007 5:41:27 PM

Short Title: Amend Speeding to Elude Arrest Statute. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SEIZURE OF ANY VEHICLE USED TO FELONIOUSLY FLEE OR FELONIOUSLY ATTEMPTING TO ELUDE A LAW ENFORCEMENT OFFICER IN THE PERFORMANCE OF THE OFFICER'S OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5 is amended by adding a new subsection to read:

"**§ 20-141.5. Speeding to elude arrest.**

...

(b2) Any vehicle involved in a violation of subsection (a) of this section, if subsections (b) or (b1) are applicable to the offense, shall be declared contraband and subject to seizure and summary forfeiture to the State. Any vehicle subject to forfeiture under this subsection shall be forfeited pursuant to the provisions of G.S. 14-86.1.

..."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 290:
Amend Speeding to Elude Arrest Statute

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	May 22, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S290-CSTC-30[v.3]		Committee Counsel

SUMMARY: ***Senate Bill 290 would provide for forfeiture of vehicles used in felonious speeding to elude arrest.***

The PCS provides that the process for forfeiture will be pursuant to G.S. 14-86.1.

CURRENT LAW: G.S. 20-141.5(a) makes it unlawful for an individual to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer. G.S. 20-141.5(b) makes violation of G.S. 20-141.5(a) a Class H felony if 2 or more of the following aggravating factors are present at the time the speeding to elude arrest occurs occurs:

- Speeding in excess of 15 miles per hour over the legal limit.
- Driving while impaired due to consumption of an impairing substance or a blood alcohol concentration of more than .14.
- Reckless driving as proscribed by G.S. 20-140.
- Negligent driving leading to an accident causing property damage in excess of $1,000 or personal injury.
- Driving while license is revoked.
- Driving in excess of the posted speed limit during the hours the speed limit is in effect in a school or work zone.
- Passing a stopped school bus.
- Driving with a child under 12 in the vehicle.

G.S. 20-141.5(b1) also makes violation of G.S. 20-141.5(a) a Class H felony if the violation is the proximate cause of the death of a person, and a Class E felony when a violation of G.S. 20-141.5(b) is the proximate cause of the death of a person.

G.S. 14-86.1 provides for the seizure and forfeiture of vehicles used in committing larceny and certain other crimes. Exceptions to forfeitures under this statute include:

- The vehicle was unlawfully in the possession of a person other than the owner.
- The violation involved was not a felony.
- A vehicle encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of and did not consent to the violation.
- The owner did not know or did not have reason to believe the vehicle was being used in the commission of the violation.
- The trial judge in the criminal proceeding determines that the forfeiture is inappropriate.

Vehicles may be seized upon process issued by a court having original jurisdiction over the offense, or may be seized without process if incident to an arrest or subject to a search under search warrant, or if subject to a prior judgment.

The vehicle is deemed to be in the custody of the law-enforcement agency seizing it, however the vehicle may be returned to the owner upon execution of a bond with sufficient sureties, in a sum double the value of the property, approved by an officer of the agency seizing the vehicle and conditioned on return on the officer on the day of the trial.

Vehicles forfeited under this section may be retained by the custodial law-enforcement agency for official use, transferred to the Department of Justice or Department of Crime Control and Public Safety, or sold as surplus property and the proceeds paid to the school fund in the county where the vehicle was seized.

BILL ANALYSIS: Senate Bill 290 would add a new subsection to G.S. 20-141.5 which would permit vehicles involved in felony violations of subsection (a), speeding to elude arrest, to be declared contraband and subject to seizure and summary forfeiture to the State, under the forfeiture procedure set out in G.S. 14-86.1.

EFFECTIVE DATE: This bill would become effective December 1, 2007, and would apply to offenses committed on or after that date.

S0290e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 212

Short Title: Land-Use Permit Appeals. (Public)

Sponsors: Senators Kinnaird; and Clodfelter.

Referred to: Judiciary I

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals to superior court by proceedings in the nature of certiorari authorized under the provisions of this Article.

(b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall state the facts that demonstrate that the petitioner has standing to seek review and shall set forth the grounds upon which the petitioner contends that an error was made as well as the relief the petitioner seeks. The facts in support of allegations that the votes of one or more members of the decision-making body were affected by impermissible bias or conflict of interest shall be set forth with particularity.

(c) Standing. – A petition may be filed under this section only by a person who has standing to challenge the decision being appealed. A person has standing if a reasonable person in the position of the person seeking to challenge the decision could reasonably conclude that the use of the property authorized by the decision would be likely to adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public. Without limiting the generality of the foregoing, the following principles shall apply in determining whether a petitioner has standing:

(1) If the decision being appealed involves a denial of a permit request, a denial of a variance, or a determination that property is being used in violation of an ordinance adopted under this Article, then any person

with an ownership or leasehold interest in the property in question, as well as the applicant for the permit or the variance (if different than the owner), has standing to file a petition.

(2) If the decision being appealed involves the issuance of a permit, the granting of a variance, or a determination that property is being used in conformity with an ordinance adopted under this Article, then the following persons shall have standing to file a petition, so long as they satisfy the general criteria set forth at the beginning of this subsection:

a. Any person who resides or owns property in such close proximity to the property that is the subject of the decision that the use of the property authorized by the decision would adversely affect that person's use or enjoyment of his or her residence or property or would adversely affect the value of that property.

b. Any person whose economic interests are directly threatened by the use authorized by the decision.

c. A property owners', neighborhood, or similar civic association if any of its members would have standing to challenge the decision as an individual, the interests sought to be protected are germane to the association's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members who would have standing.

For purposes of this subsection, the term "person" refers to any legal entity authorized to bring suit in his, her, or its own name, and the term "owner" refers to any person having an ownership interest in property.

(d) Respondent. – The respondent named in the petition shall be the city whose council, board of adjustment, planning board, or other body made the decision that is being appealed. If the petitioner is not the applicant before the council, board of adjustment, or planning board whose decision is being appealed, the petitioner shall name that applicant as a respondent. Any petitioner may, but need not, also name as a respondent any person who participated in the hearing before the council, board of adjustment, or planning board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(f) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to

bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section, except that:

(1) If the petitioner is not the applicant before the council, board of adjustment, or planning board whose decision is being appealed and the petitioner fails to name the applicant as a respondent, then the applicant may intervene as a matter of right.

(2) Except as otherwise stated in subdivision (1) of this subsection, an intervenor must demonstrate that a reasonable person in the position of the intervenor could reasonably believe that the outcome of the appeal could adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public.

(h) The Record. – The record shall consist of all documents and exhibits submitted to the council, planning board, or board of adjustment whose decision is challenged, together with the minutes of the meeting or meetings at which the matter appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the matter appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section, except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if and to the extent that the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of bias or conflict of interest, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

(1) When reviewing the decision of a city council, board of adjustment, or planning board under the provisions of this section, the trial court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including, but not limited to, those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the municipality or the authority conferred upon the decision-making body by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making body below erred in the interpretation of an ordinance, the trial court may review that issue de novo, provided that the court shall give due consideration to the construction adopted by those entities charged with execution and administration of the ordinance where that construction has been thoroughly considered and consistently applied by those entities.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making body on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that were reasonable for the decision-making body to rely upon it. Notwithstanding the foregoing, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses (i.e., persons not qualified by reason of specialized knowledge, skill, experience, training, or education to testify as an expert) as to matters about which only expert testimony would generally be admissible under the rules of evidence. By way of illustration without limitation, the term "competent evidence" shall not be deemed to include the opinion of lay witnesses as to whether (i) the use of property in a particular way would affect the value of other property, or (ii) the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

(k) Decision of the Trial Court. – Following its review of the decision-making body in accordance with subsection (j) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or

remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making body is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making body has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision below is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the council, board of adjustment, or planning board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Without limiting the generality of the foregoing, (i) if the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued; and (ii) if the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. By way of illustration without limitation, if the court affirms the decision of a board of adjustment that a petitioner is in violation of a zoning ordinance, the court may issue an order enjoining the petitioner from continuing the violation."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

Whenever appeals to superior court by proceedings in the nature of certiorari are authorized under the provisions of this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals. In this context, the term "city council," as used in G.S. 160A-393, shall be deemed to refer to the "board of commissioners," and the term "city" or "municipality" shall be deemed to refer to the "county."

SECTION 2.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a designated planning board (other than a planning board comprised solely of members of a city planning staff) and the ordinance authorizes the council or planning board to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c) and G.S. 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, designated planning board, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the council or planning board to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the council or planning board; or (ii) authorizes the council or planning board to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 2.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-336. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a designated planning board (other than a planning board comprised solely of members of a county planning staff) and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f) and G.S. 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory

or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the board of commissioners or planning board to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the board of commissioners or planning board; or (ii) authorizes the board of commissioners or planning board to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 3. This act becomes effective January 1, 2008, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 212
PROPOSED COMMITTEE SUBSTITUTE S212-CSST-62 [v.5]

5/22/2007 8:47:59 AM

Short Title: Land-Use Permit Appeals. (Public)

Sponsors:

Referred to:

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. – A city council, planning board, board of adjustment, or other board making quasi-judicial decision making appointed by the city council under this Article.

(2) Person. – Any legal entity authorized to bring suit in the legal entity's name.

(c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made. The facts, if any, in support of allegations that the votes of one or more members of the decision-making board were affected by impermissible bias or conflict of interest shall be set forth with particularity.

(3) Set forth the relief the petitioner seeks.

(c) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. For purposes of this section, the term "person" means any legal entity authorized to bring suit in the legal entity's name. The following persons shall have standing to file a petition under this section:

(1) Any person meeting any of the following criteria:

a. Has an ownership or leasehold interest in the property that is the subject of the decision being appealed.

b. Has an option or contract to purchase the property that is the subject of the decision being appealed.

c. Was an applicant before the decision-making board whose decision is being appealed.

(2) Any person with an ownership or leasehold interest in property any portion of which is located within 100 feet of the boundary of the property that is the subject of the decision being appealed.

(3) Any other person who will suffer special damages as the result of the decision being appealed. For purposes of this subdivision, 'special damages' mean a harm suffered by a person not shared by the community as a whole.

(4) An incorporated property owners association to which all owners of property in a designated area belong by virtue of their ownership of property in that area, only if any of the members of the incorporated property owners association would have standing as an individual to challenge the decision being appealed.

(d) Respondent. – The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing before decision-making board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(f) Answer to the Petition. – The respondent may, but need not, file an answer to the petition. Except, if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subsection (c)(1) of this section may intervene as a matter of right.

(2) Any person, other than one who may intervene as a matter of right, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subsection (c)(2) and (c)(3) of this section.

(3) Any person seeking to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subsection (c) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner(s).

(h) The Record. – The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-381(d) or G.S. 160A-388(e1) or conflict of interest as described in G.S. 14-234, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

(1) When reviewing the decision of a decision-making board under the provisions of this section, the trial court shall ensure that the rights of

petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including, those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making board erred in interpreting an ordinance, the trial court may review that issue de novo, and freely substitute its own judgment for that of the decision-making board.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(k) Decision of the Trial Court. – Following its review of the decision-making board in accordance with subsection (j) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with

appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically,

(i) If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued.

(ii) If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

(a) Whenever appeals of quasi-judicial decisions of decision-making boards is to superior court and in the nature of certiorari as required by this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals.

(b) For purposes of this section, as used in G.S. 160A-393, the term "city council" shall be deemed to refer to the "board of commissioners," and the term "city" shall be deemed to refer to the "county."

(c) For purposes of this section, the "impermissible conflict as described in G.S. 160A-381(d) or G.S. 160A-388(e1)" of G.S. 160A-393(i)(2) shall mean "impermissible conflict as described in G.S. 153A-340(g) or G.S. 153A-345(e1)."

SECTION 2.(a) Part 2 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised

solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), G.S. 160A-388(e2), and G.S. 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if either of the following apply:

(1) The city council or planning board is authorized to decide whether to approve or deny the plat based upon all of the following:

a. Whether the application complies with the specific requirements set forth in the ordinance

b. Whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board.

(2) The city council or planning board is authorized to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision in addition those set forth in the ordinance."

SECTION 2.(b) Part 2 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-336. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), G.S. 153A-345(e2), and G.S. 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court

seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if either of the following apply:

(1) The city council or planning board is authorized to decide whether to approve or deny the plat based upon all of the following:

a. Whether the application complies with the specific requirements set forth in the ordinance

b. Whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board.

(2) The city council or planning board is authorized to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision in addition those set forth in the ordinance."

SECTION 3. G.S. 63-34 reads as rewritten:

"**§ 63-34. Judicial review.**

(a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. Such petition shall comply with the provisions of G.S. 160A-393.

(b) ~~Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board.~~ The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(d) ~~The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or if it was not so urged, unless there were reasonable grounds for failure to do so.~~

(e) Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from."

SECTION 4. G.S. 162A-93(b) reads as rewritten:

"(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of **certiorari**, within 30 days after the finding. The petition for review in the nature of certiorari shall comply with G.S. 160A-393."

SECTION 5. This act becomes effective January 1, 2008, and applies to quasi-judicial decisions on or after that date.

February 19, 2007

S 212. LAND-USE PERMIT APPEALS. Filed 2/19/07. *TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.* Enacts new GS 160A-393 setting out procedures for land-use permit appeals from quasi-judicial decisions, in the nature of petitions for certiorari to the superior court. Sets out criteria for determining standing to appeal and provides for a petition to be filed in the county in which the matter arose. Provides for the court to decide issues based on the record unless the record is insufficient to allow appropriate determination of issues relating to (1) standing; (2) bias or conflict of interest; or (3) constitutional violations or statutory authority. In addition the court may review de novo an issue of whether the decision-making body erred in interpreting an ordinance. Establishes guidelines for a court's determination of appropriate relief to be granted if a decision is not affirmed in whole or in part, and specifies that the court may grant injunctive relief. Enacts new GS 153A-349 making the same provisions applicable to counties. Enacts new GS 160A-377 and 153A-336, providing that when a subdivision ordinance provides for a city council, board of commissioners, or designated planning agency to make quasi-judicial decisions regarding approval of subdivision plats, the decision is subject to review by the superior court by proceedings in the nature of certiorari pursuant to the procedures described above. When the ordinance provides for only administrative or ministerial determinations as to plats, an aggrieved party may seek review by filing an action in superior court for appropriate declaratory or equitable relief. Effective for actions filed on or after January 1, 2008.

Intro. by Kinnaird. GS 153A, 160A

May 22, 2007

S 212. LAND-USE PERMIT APPEALS. Filed 2/19/07. Senate committee substitute makes the following changes to 1st edition. Modifies proposed GS 160A-393 to provide that it applies to appeals to superior court of quasi-judicial decisions of decision-making boards. Adds definitions of *decision-making board* and *person*. Changes who has standing to file a petition for writ of certiorari to the superior court. Clarifies that if the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner must also name that applicant as a respondent. Also provides that any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing before the decision-making board (was, may name any person who participated in the hearing before the decision-making board). Changes the exceptions listed to Rule 24 of the Rules of Civil Procedure governing motions to intervene. Specifies that the hearing record reviewed by the court may be supplemented with other evidence if the record is not adequate to determine whether the decision-making body was not impartial as a result of (1) impermissible conflict as described in GS 160A-381(d) (voting on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member) or GS 160A-388(e1) (impermissible conflicts include having a fixed opinion prior to hearing the matter, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter) or (2) conflict of interest under GS 14-234 (public officers or employees benefiting from public contracts). Specifies that the trial court may freely substitute its judgment for that of the decision making board when the issue before the court is whether the board erred in interpreting an ordinance. Modifies proposed GS 153A-349 to delete a reference to the term "municipality." Also provides that the term *impermissible conflict* as described in GS 160A-381(d) or GS 160A-388(e1) has the same meaning as described in GS 153A-340(g) or GS 153A-345(e1). Modifies proposed GS 160A-377 and GS 153A-336 to include a reference to the provisions of GS 160A-388(e2) in those that apply to appeals concerning decisions on whether to approve a subdivision plat. Amends GS 63-34 and GS 162A-93(b) to make conforming changes. Replaces the terms *council, board of adjustment, planning board, or other body*, with *decision-making board* throughout the bill. Makes technical changes throughout the bill. Amends the effective date to specify that the act applies to appeals filed on or after January 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 90*

Short Title: Post-Adoption Contacts. (Public)

Sponsors: Senators Kinnaird; Allran, Atwater, Bingham, Dorsett, and Weinstein.

Referred to: Judiciary 1 (Civil).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ADOPTIVE PARENT AND A BIRTH RELATIVE TO ENTER INTO A WRITTEN AGREEMENT TO PROVIDE FOR POST-ADOPTION CONTACT AND COMMUNICATION AS RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH AND TO MAKE OTHER CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 48 of the General Statutes is amended by adding a new Article to read:

"Article 11.

"Post-Adoption Contacts.

"**§ 48-11-100. Definitions.**

For purposes of this Article, the following definitions apply:

(1) Birth relative. – The biological parent, grandparent, sibling, or any other member of an adoptee's biological family related to the adoptee by blood or marriage.

(2) Post-adoption contacts agreement. – A voluntary written agreement that allows specifically described post-adoption contact.

(3) Post-adoption contacts. – Visitation, communication, or any other contact or conveyance of information regarding an adoptee.

"**§ 48-11-101. Post-adoption contacts agreement; terms; conditions.**

(a) A prospective adoptive parent and a birth relative may enter into a post-adoption contacts agreement before or at the time a decree of adoption is granted. A biological parent who has not reached 18 years of age shall have legal capacity to enter into a post-adoption contacts agreement and shall be as fully bound by the agreement as if the biological parent had attained 18 years of age.

(b) A post-adoption contacts agreement may include the following provisions:

(1) Visitation between the adoptee and a birth relative.

(2) Communication, including the exchange of letters and telephone contact between the adoptee and a birth relative.

(3) The sharing of information about the adoptee or the birth relative by parties to the agreement.

(c) A post-adoption contacts agreement shall include the following in bold type:

(1) The failure of an adoptive parent, birth relative, or the adoptee to follow the terms of this agreement or modifications to the agreement shall not be grounds for setting aside a final order of adoption.

(2) A disagreement between the parties or litigation brought to enforce, modify, or terminate this agreement shall not affect the validity of the adoption or serve as a basis for orders affecting the custody of the adoptee.

(3) The parties agree, in good faith, to participate in mediation or other appropriate dispute resolution proceedings to resolve any dispute that may arise relating to the agreement.

(4) A court will not act on a motion to modify, enforce, or terminate this agreement unless the petitioner has participated or attempted to participate in good faith in mediation or other appropriate dispute resolution proceedings to resolve any dispute.

(d) A post-adoption contacts agreement is enforceable only if it is approved by a district court judge and incorporated in a court order signed by a district court judge.

(e) In approving a post-adoption contacts agreement, the court shall make each of the following findings of fact:

(1) The parties to the agreement have appeared before the court personally, unless the court, for good cause, waives the requirement that the parties appear personally.

(2) Each adoptive parent has consented to the granting of post-adoption contact.

(3) The birth relative has acknowledged in writing that the birth relative understands that the final order of adoption is irrevocable regardless of whether the adoptive parent fails to abide by the post-adoption contacts agreement.

(4) The adoptive parent has acknowledged in writing that the adoptive parent understands that the post-adoption contacts agreement, when approved by the court, grants the birth relative the right to seek enforcement in court of the post-adoption contacts specified in the agreement.

(5) The court has determined that the adoptee's best interests would be served by approving the post-adoption contacts agreement.

(f) The court may approve a post-adoption contacts agreement after considering the following conditions and making findings of fact regarding each condition:

(1) Whether there is a significant emotional attachment between the adoptee and the birth relative to whom the agreement gives post-adoption contacts or that the adoptee is part of a sibling group to

whom post-adoption contacts are being granted and it is in the adoptee's best interests to be treated similarly to his or her siblings.

(2) Whether the adoptee, if the adoptee is 12 years of age or older, consents to the post-adoption contacts agreement.

(3) Whether the county department of social services or the licensed child-placing agency that placed the adoptee for adoption, or in the case of a direct placement adoption, the agency making the report to the court under G.S. 48-2-501, has reviewed the post-adoption contacts agreement and either recommended approval of the agreement or stated in writing its reasons for not recommending approval.

(4) Whether the adoptee is represented by a court-appointed guardian ad litem who has reviewed the post-adoption contacts agreement and either recommended approval of the agreement or stated in writing the guardian ad litem's reasons for not recommending approval.

(g) The Administrative Office of the Courts may adopt rules and shall prescribe and supply forms for establishing a civil action pursuant to this section.

(h) The entire record of a proceeding involving approval, modification, enforcement, or termination of a post-adoption contacts agreement under this Article shall not be a matter of public record. The clerk of court shall maintain the record of the proceeding separately from other records and withhold the record from public inspection. The record may be examined only by order of the court, by the parties to the post-adoption contacts agreement, or by their attorneys or guardians ad litem.

"**§ 48-11-102. Modification, enforcement, and termination.**

(a) A party to a post-adoption contacts agreement may file a new civil action in district court for the purpose of modifying, enforcing, or terminating a post-adoption contacts agreement after the party has participated or attempted to participate in good faith in mediation or other appropriate dispute resolution proceedings to resolve any dispute.

(b) In a proceeding under this section, the court may modify a post-adoption contacts agreement if the court finds by a preponderance of the evidence either of the following:

(1) There has been a substantial change of circumstances and the modification is necessary to serve the best interests of the adoptee, and the modification would not enlarge, expand, or increase the amount of contact permitted by the post-adoption contacts agreement, place new obligations on the adoptive parent, or undermine the adoptive parent's authority.

(2) The parties to the agreement, including the adoptee, if the adoptee is 12 years of age or older, have agreed to the modification.

(c) The court may enforce a post-adoption contacts agreement in a proceeding under this section if the court finds by clear, cogent, and convincing evidence that enforcement of the post-adoption contacts agreement is in the best interests of the adoptee and enforcement would not enlarge, expand, or increase the amount of contact

permitted by the post-adoption contacts agreement, place new obligations on the adoptive parent, or undermine the adoptive parent's authority.

(d) The court may terminate a post-adoption contacts agreement in a proceeding under this section if the court finds by clear, cogent, and convincing evidence that termination of the post-adoption privileges agreement is in the best interests of the adoptee or the parties to the agreement, including the adoptee if the adoptee is 12 years of age or older, have agreed to terminate the agreement.

(e) In any proceeding under this section to modify, enforce, or terminate a post-adoption contacts agreement, the court may receive documentary evidence or written reports to support modification, enforcement, or termination of the agreement. No testimony or evidentiary hearing shall be required unless the court finds after review of the documentary evidence or written reports that a hearing is necessary to determine the issues raised in the motion before the court. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear, cogent, and convincing evidence that the best interests of the adoptee may be protected or advanced only by the inquiry and that the inquiry would not disturb the stability of the adoptee's home to the detriment of the adoptee.

(f) The court shall not award monetary damages. However, the court may award attorneys' fees and costs to the prevailing party if the court, in its discretion, determines that it would prevent frivolous or harassing litigation.

"§ 48-11-103. Effect of failure to comply.

The court shall not set aside a decree of adoption, revoke a written consent to an adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order for failure of a birth relative, an adoptive parent, or an adoptee to comply with any or all of the original terms of or subsequent modifications to the post-adoption privileges agreement."

SECTION 2. G.S. 48-1-100 reads as rewritten:

"§ 48-1-100. Legislative findings and intent; construction of Chapter.

(a) The General Assembly finds that it is in the public interest to establish a clear judicial process for adoptions, to promote the integrity and finality of adoptions, to encourage prompt, conclusive disposition of adoption proceedings, and to structure services to adopted children, biological parents, and adoptive parents that will provide for the needs and protect the interests of all parties to an adoption, particularly adopted minors.

(b) With special regard for the adoption of minors, the General Assembly declares as a matter of legislative policy that:

(1) The primary purpose of this Chapter is to advance the welfare of minors by (i) protecting minors from unnecessary separation from their original parents, (ii) facilitating the adoption of minors in need of adoptive placement by persons who can give them love, care, security, and support, (iii) protecting minors from placement with adoptive parents unfit to have responsibility for their care and rearing, and (iv) assuring the finality of the adoption; and

(2) Secondary purposes of this Chapter are (i) to protect biological parents from ill-advised decisions to relinquish a child or consent to the child's adoption, (ii) to protect adoptive parents from assuming responsibility for a child about whose heredity or mental or physical condition they know nothing, (iii) to protect the privacy of the parties to the adoption, and (iv) to discourage unlawful trafficking in minors and other unlawful placement activities.

(c) In construing this Chapter, the needs, interests, and rights of minor adoptees are primary. Any conflict between the interests of a minor adoptee and those of an adult shall be resolved in favor of the minor.

(d) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(e) Nothing in this Chapter shall be construed to prevent an adoptive parent and a birth relative from entering into a post-adoption contacts agreement as provided in Article 11 of this Chapter."

SECTION 3. G.S. 7B-1100 reads as rewritten:

"**§ 7B-1100. Legislative intent; construction of Article.**

(a) The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

(1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile's biological or legal parents when the parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.

(2) It is the further purpose of this Article to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.

(3) Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict.

(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) Nothing in this Article shall be construed to prevent the court in a proceeding under this Article for termination of parental rights from approving a post-adoption contacts agreement as provided in Article 11 of Chapter 48 of the General Statutes."

SECTION 4. G.S. 7B-1110(a) is amended by adding a new subdivision to read:

"...

(5a) Whether or not the prospective adoptive parent and the birth relative, and the adoptee if the adoptee is 12 years of age or older, intend to enter into a post-adoption contacts agreement and the impact of that

agreement on the best interests of the child regarding termination of parental rights of the parent. For purposes of this subdivision, the term 'birth relative' shall have the same meaning as defined in G.S. 48-11-100(1)."

SECTION 5. G.S. 7B-1112 reads as rewritten:

"§ 7B-1112. Effects of termination order.

(a) An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

(2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the petitioner or movant, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile.

(b) Nothing in this section shall be construed to prevent the parent and the prospective adoptive parent from entering into a post-adoption contacts agreement in accordance with Article 11 of Chapter 48 of the General Statutes."

SECTION 6. G.S. 1-301.2(b) reads as rewritten:

"(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall transfer the proceeding to the appropriate ~~court.~~court; provided that, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading or written motion in an approval of a post-adoption contacts agreement under Article 11 of Chapter 48 of the General Statutes, the clerk shall transfer the proceeding to domestic court, and the court shall ensure that the identity of the parties to the agreement and the proceeding are confidential. In court, the proceeding is subject to the provisions in the General Statutes and to the rules that apply to actions initially filed in that court."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 90*
PROPOSED COMMITTEE SUBSTITUTE S90-CSRR-23 [v.4]

5/21/2007 5:21:31 PM

Short Title: Post-Adoption Contacts. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ADOPTIVE PARENT AND A BIRTH RELATIVE TO ENTER INTO A WRITTEN AGREEMENT TO PROVIDE FOR POST-ADOPTION CONTACT AND COMMUNICATION AS RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH; TO MAKE OTHER CONFORMING STATUTORY CHANGES; AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 48 of the General Statutes is amended by adding a new Article to read:

"Article 11.

"Post-Adoption Contacts.

"**§ 48-11-100. Definitions.**

For purposes of this Article, the following definitions apply:

(1) Birth relative. – The biological parent, grandparent, sibling, or any other member of an adoptee's biological family related to the adoptee by blood or marriage.

(2) Post-adoption contacts agreement. – A voluntary written agreement that allows specifically described post-adoption contact.

(3) Post-adoption contacts. – Communication, limited visitation, or any other contact or conveyance of information regarding an adoptee.

"**§ 48-11-101. Post-adoption contacts agreement; terms; conditions.**

(a) A prospective adoptive parent and a birth relative may enter into a post-adoption contacts agreement before or at the time a decree of adoption is granted. A biological parent who has not reached 18 years of age shall have legal capacity to enter into a post-adoption contacts agreement and shall be as fully bound by the agreement as if the biological parent had attained 18 years of age.

(b) A post-adoption contacts agreement may include the following provisions:

(1) Communication, including the exchange of letters and telephone contact between the adoptee and a birth relative.
(2) The sharing of information about the adoptee or the birth relative by parties to the agreement.
(3) Limited visitation between the adoptee and a birth relative.

(c) A post-adoption contacts agreement shall include the following in bold type:
(1) The failure of an adoptive parent, birth relative, or the adoptee to follow the terms of this agreement or modifications to the agreement shall not be grounds for setting aside a final order of adoption.
(2) A disagreement between the parties or litigation brought to enforce, modify, or terminate this agreement shall not affect the validity of the adoption or serve as a basis for orders affecting the custody of the adoptee.
(3) The parties agree, in good faith, to participate in mediation or other appropriate dispute resolution proceedings to resolve any dispute that may arise relating to the agreement.
(4) A court will not act on a motion to modify, enforce, or terminate this agreement unless the petitioner has participated or attempted to participate in good faith in mediation or other appropriate dispute resolution proceedings to resolve any dispute.

(d) A post-adoption contacts agreement is enforceable only if it is approved by a district court judge and incorporated in a court order signed by a district court judge.

(e) In approving a post-adoption contacts agreement, the court shall make each of the following findings of fact:
(1) The parties to the agreement have appeared before the court personally, unless the court, for good cause, waives the requirement that the parties appear personally.
(2) Each adoptive parent has knowingly and voluntarily consented to the granting of post-adoption contact and has been informed of the right to retain counsel before giving consent.
(3) The birth relative has acknowledged in writing that the birth relative understands that the final order of adoption is irrevocable regardless of whether the adoptive parent fails to abide by the post-adoption contacts agreement.
(4) The adoptive parent has acknowledged in writing that the adoptive parent understands that the post-adoption contacts agreement, when approved by the court, grants the birth relative the right to seek enforcement in court of the post-adoption contacts specified in the agreement.
(5) The court has determined that the adoptee's best interests would be served by approving the post-adoption contacts agreement.

(f) The court may approve a post-adoption contacts agreement after considering the following conditions and making findings of fact regarding each condition:

(1) Whether there is a significant emotional attachment between the adoptee and the birth relative to whom the agreement gives post-adoption contacts or that the adoptee is part of a sibling group to whom post-adoption contacts are being granted and it is in the adoptee's best interests to be treated similarly to his or her siblings.

(2) Whether the adoptee, if the adoptee is 12 years of age or older, consents to the post-adoption contacts agreement.

(3) Whether the county department of social services or the licensed child-placing agency that placed the adoptee for adoption, or in the case of a direct placement adoption, the agency making the report to the court under G.S. 48-2-501, has reviewed the post-adoption contacts agreement and either recommended approval of the agreement or stated in writing its reasons for not recommending approval.

(4) Whether the adoptee is represented by a court-appointed guardian ad litem who has reviewed the post-adoption contacts agreement and either recommended approval of the agreement or stated in writing the guardian ad litem's reasons for not recommending approval.

(g) The Administrative Office of the Courts may adopt rules and shall prescribe and supply forms for establishing a civil action pursuant to this section.

(h) The entire record of a proceeding involving approval, modification, enforcement, or termination of a post-adoption contacts agreement under this Article shall not be a matter of public record. The clerk of court shall maintain the record of the proceeding separately from other records and withhold the record from public inspection. The record may be examined only by order of the court, by the parties to the post-adoption contacts agreement, or by their attorneys or guardians ad litem.

"**§ 48-11-102. Modification, enforcement, and termination.**

(a) A party to a post-adoption contacts agreement may file a new civil action in district court for the purpose of modifying, enforcing, or terminating a post-adoption contacts agreement after the party has participated or attempted to participate in good faith in mediation or other appropriate dispute resolution proceedings to resolve any dispute.

(b) In a proceeding under this section, the court may modify a post-adoption contacts agreement if the court finds by a preponderance of the evidence either of the following:

(1) There has been a substantial change of circumstances and the modification is necessary to serve the best interests of the adoptee, and the modification would not enlarge, expand, or increase the amount of contact permitted by the post-adoption contacts agreement, place new obligations on the adoptive parent, or undermine the adoptive parent's authority.

(2) The parties to the agreement, including the adoptee, if the adoptee is 12 years of age or older, have agreed to the modification.

(c) The court may enforce a post-adoption contacts agreement in a proceeding under this section if the court finds by clear, cogent, and convincing evidence that

enforcement of the post-adoption contacts agreement is in the best interests of the adoptee and enforcement would not enlarge, expand, or increase the amount of contact permitted by the post-adoption contacts agreement, place new obligations on the adoptive parent, or undermine the adoptive parent's authority.

(d) The court may terminate a post-adoption contacts agreement in a proceeding under this section if the court finds by clear, cogent, and convincing evidence that termination of the post-adoption privileges agreement is in the best interests of the adoptee or the parties to the agreement, including the adoptee if the adoptee is 12 years of age or older, have agreed to terminate the agreement.

(e) In any proceeding under this section to modify, enforce, or terminate a post-adoption contacts agreement, the court may receive documentary evidence or written reports to support modification, enforcement, or termination of the agreement. No testimony or evidentiary hearing shall be required unless the court finds after review of the documentary evidence or written reports that a hearing is necessary to determine the issues raised in the motion before the court. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear, cogent, and convincing evidence that the best interests of the adoptee may be protected or advanced only by the inquiry and that the inquiry would not disturb the stability of the adoptee's home to the detriment of the adoptee. The court shall order the cost of any services performed by a county department of social services or a licensed child placing agency to be paid by the parties as the court designates.

(f) The court shall not award monetary damages. However, the court may award attorneys' fees and costs to the prevailing party if the court, in its discretion, determines that it would prevent frivolous or harassing litigation.

"§ 48-11-103. Effect of failure to comply.

The court shall not set aside a decree of adoption, revoke a written consent to an adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order for failure of a birth relative, an adoptive parent, or an adoptee to comply with any or all of the original terms of or subsequent modifications to the post-adoption privileges agreement."

SECTION 2. G.S. 48-1-100 reads as rewritten:

"§ 48-1-100. Legislative findings and intent; construction of Chapter.

(a) The General Assembly finds that it is in the public interest to establish a clear judicial process for adoptions, to promote the integrity and finality of adoptions, to encourage prompt, conclusive disposition of adoption proceedings, and to structure services to adopted children, biological parents, and adoptive parents that will provide for the needs and protect the interests of all parties to an adoption, particularly adopted minors.

(b) With special regard for the adoption of minors, the General Assembly declares as a matter of legislative policy that:

(1) The primary purpose of this Chapter is to advance the welfare of minors by (i) protecting minors from unnecessary separation from their original parents, (ii) facilitating the adoption of minors in need of adoptive placement by persons who can give them love, care, security,

and support, (iii) protecting minors from placement with adoptive parents unfit to have responsibility for their care and rearing, and (iv) assuring the finality of the adoption; and

(2) Secondary purposes of this Chapter are (i) to protect biological parents from ill-advised decisions to relinquish a child or consent to the child's adoption, (ii) to protect adoptive parents from assuming responsibility for a child about whose heredity or mental or physical condition they know nothing, (iii) to protect the privacy of the parties to the adoption, and (iv) to discourage unlawful trafficking in minors and other unlawful placement activities.

(c) In construing this Chapter, the needs, interests, and rights of minor adoptees are primary. Any conflict between the interests of a minor adoptee and those of an adult shall be resolved in favor of the minor.

(d) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(e) Nothing in this Chapter shall be construed to prevent an adoptive parent and a birth relative from entering into a post-adoption contacts agreement as provided in Article 11 of this Chapter."

SECTION 3. G.S. 7B-1100 reads as rewritten:

"**§ 7B-1100. Legislative intent; construction of Article.**

(a) The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

(1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile's biological or legal parents when the parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.

(2) It is the further purpose of this Article to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.

(3) Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict.

(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) Nothing in this Article shall be construed to prevent the court in a proceeding under this Article for termination of parental rights from approving a post-adoption contacts agreement as provided in Article 11 of Chapter 48 of the General Statutes."

SECTION 4. G.S. 7B-1110(a) is amended by adding a new subdivision to read:

"...

(5a) Whether or not the prospective adoptive parent and the birth relative, and the adoptee if the adoptee is 12 years of age or older, intend to enter into a post-adoption contacts agreement and the impact of that agreement on the best interests of the child regarding termination of parental rights of the parent. For purposes of this subdivision, the term 'birth relative' shall have the same meaning as defined in G.S. 48-11-100(1)."

SECTION 5. G.S. 7B-1112 reads as rewritten:

"**§ 7B-1112. Effects of termination order.**

(a) An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

(2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the petitioner or movant, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile.

(b) Nothing in this section shall be construed to prevent the parent and the prospective adoptive parent from entering into a post-adoption contacts agreement in accordance with Article 11 of Chapter 48 of the General Statutes."

SECTION 6. G.S. 1-301.2(b) reads as rewritten:

"(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall transfer the proceeding to the appropriate ~~court.~~court; provided that, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading or written motion in an approval of a post-adoption contacts agreement u nder Article 11 of Chapter 48 of the General Statutes, the clerk shall transfer the proceeding to domestic court, and the court shall ensure that the identity of

the parties to the agreement and the proceeding are confidential. In court, the proceeding is subject to the provisions in the General Statutes and to the rules that apply to actions initially filed in that court."

SECTION 7. There is appropriated from the General Fund to the Division of Social Services of the Department of Health and Human Services the sum of forty thousand dollars ($40,000) for the 2007-2008 fiscal year for the purpose of training for the implementation of this act. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of ten thousand dollars ($10,000) for the 2007-2008 fiscal year for the purpose of training for the implementation of this act.

SECTION 8. Section 7 of this act becomes effective July 1, 2007. The remainder of this act becomes effective on December 31, 2009.

SENATE BILL 90: Post-Adoption Contacts

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 19, 2007
Introduced by:	Sen. Kinnaird	**Summary by:**	William R. Gilkeson
Version:	PCS to First Edition S90-CSRR-23		Committee Co-Counsel

SUMMARY: This PCS for Senate Bill 90 would allow an adoptive parent and a birth relative of the adoptee to enter into a written agreement for post-adoption contact between the birth relative and the adoptee. Effective 12-31-09. The PCS would also appropriate $50,000 for training of DSS and court personnel, effective July 1, 2007..

[As introduced, this bill was identical to H68, as introduced by Rep. Farmer-Butterfield, which is currently in House Children, Youth and Families .]

CURRENT LAW: Under the current law in North Carolina, adoptive parents and birth relatives may informally agree to post-adoption contact or communication between the adoptee and birth relative following an adoption. However, those agreements are not legally enforceable, and the birth relative would have no recourse if the adoptive parent refused to comply with the terms of the agreement.

BILL ANALYSIS: The bill would allow an adoptive parent and a "birth relative" to enter into an enforceable written agreement providing for "post-adoption contacts" between the birth relative and the adoptee. "Birth relative" is defined as a biological parent, grandparent, sibling, or any other member of an adoptee's biological family related to the adoptee by blood or marriage. "Post-adoption contacts" are defined as visitation, communication, or any other contact or conveyance of information regarding an adoptee. The bill would provide a court-supervised procedure for the parties to enter into, modify, enforce, or terminate the agreement.

Making the Agreement. A prospective adoptive parent and a birth relative may enter into the agreement before or at the time of the adoption. If the birth relative is a biological parent, that parent may enter into the agreement and be bound by it even before reaching the age of 18, the customary threshold age for contractual power. The agreement may include the elements of visitation, communication, and sharing of information. The agreement must display in bold type certain disclaimers: That the agreement or its breach does not affect the validity of the adoption itself, and that any action by a court to enforce, modify, or terminate the agreement is dependent upon the petitioner's willingness to participate in mediation. The agreement is valid only if approved by a District Court judge. In order to do so the judge must make certain findings of fact concerning the understand of the parties of the agreement and the best interests of the child. The court is required to consider and make findings concerning whether the child is part of a sibling group that requires similar treatment, whether the adoptee if 12 or older consents, whether the county DSS or placement agency approves, and whether a guardian ad litem approves. All records of the agreement are confidential and not public records.

Modifying, Enforcing, and Terminating the Agreement. A party to a post-adoption contacts agreement may petition the court to modify, enforce, or terminate the agreement, but only after participating or attempting to participate in mediation or appropriate dispute settlement proceedings.

- A court may ***modify*** an agreement if it finds by a preponderance of the evidence that the circumstances have changed, a modification is necessary to serve the best interest of the adoptee, the change will not increase the amount of contact, place new obligations on the adoptive parent,

or undermine the adoptive parent's authority, and that the parties agree to the modification. The adoptee, if 12 or older, would also have to agree.

- A court may ***enforce*** an agreement if it finds by clear, cogent, and convincing evidence that enforcement is in the best interest of the adoptee, the enforcement will not increase the amount of contact, place new obligations on the adoptive parent, or undermine the adoptive parent's authority.
- A court may ***terminate*** an agreement if it finds that doing so is in the best interest of the adoptee ***or*** the parties have agreed to terminate. The adoptee, if 12 or older, would have a say in whether to terminate.

The court is given broad authority in proceedings to modify, enforce, or terminate in how it receives and deals with evidence. The court may not order further investigation or evaluation unless it finds by clear, cogent, and convincing evidence that such is necessary to protect or advance the adoptee's best interest and that the probe would not disturb the stability of the adoptee's home to the adoptee's detriment.

The court, in a proceeding to modify, enforce, or terminate, may not award monetary damages. It may, however, award attorneys' fees and costs to the prevailing party if it thinks that would prevent frivolous or harassing litigation.

Failure to Comply With the Agreement Does Not Invalidate the Adoption. The court is prohibited from using someone's failure to comply with a post-adoption contacts agreement as a basis for setting aside an adoption, revoking a consent to an adoption, rescinding a termination of parental rights or any prior court order.

The new Article in Chapter 48, the Adoptions Chapter of the General Statutes, is Section 1 of the bill. Sections 2, 3, 4, 5, and 6 are conforming changes.

Section 7 of the bill would appropriate $40,000 to the Division of Social Services and $10,000 to the Administrative Office of the Courts for training.

EFFECTIVE DATE: December 31, 2009, for substantive provisions of the bill. July 1, 2007 for the training appropriations.

BACKGROUND: The bill was recommended by the Joint Legislative Study Commission on Children and Youth.

(Wendy Graf Ray, counsel to the House Committee on Children, Youth, and Families, contributed to this summary.)

S0090e1-SMRR-CSRR-23

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1009*

Short Title:	Discovery/DA Work Product & Confid. Informant.	(Public)
Sponsors:	Senators Rand; and Jones.	
Referred to:	Judiciary I (Civil).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE STATE IS NOT REQUIRED TO DISCLOSE THE IDENTITY OF A CONFIDENTIAL INFORMANT IN A CRIMINAL CASE UNLESS DISCLOSURE IS OTHERWISE REQUIRED BY LAW, AND TO PROTECT THE WORK PRODUCT OF PROSECUTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-904 reads as rewritten:

"**§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.**

(a) The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal ~~staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal~~ staff.

(a1) The State is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law.

(b) Nothing in this section prohibits the State from making voluntary disclosures in the interest of justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements."

SECTION 2. This act is effective when it becomes law and applies to pending cases.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1009*
PROPOSED COMMITTEE SUBSTITUTE S1009-CSRK-38 [v.2]

5/21/2007 5:37:36 PM

Short Title: Discovery/DA notes. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A WITNESS'S ORAL STATEMENTS TO A PROSECUTING ATTORNEY DO NOT NEED TO BE RECORDED UNLESS THE STATEMENT CONTAINS SIGNIFICANTLY NEW OR DIFFERENT INFORMATION FROM A PRIOR STATEMENT, AND TO PROVIDE WHAT TYPE OF WITNESS IDENTIFICATION INFORMATION MUST BE DISCLOSED TO THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903(a)(1) reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. Oral statements shall be in written or recorded ~~form.~~ form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is significantly new or different information in the oral statement from a prior statement made by the witness. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate

safeguards, to inspect, examine, and test any physical evidence or sample contained therein."

SECTION 2. G.S. 15A-904 reads as rewritten:

"**§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.**

(a) The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(a1) The State is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law.

(a2) The State is not required to provide any personal identifying information of a witness beyond that witness's name, address, date of birth, and published phone number, unless the court determines upon motion of the defendant that such additional information is necessary to accurately identify and locate the witness.

(b) Nothing in this section prohibits the State from making voluntary disclosures in the interest of justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements."

SECTION 3. This act is effective when it becomes law and applies to pending cases.

SENATE BILL 1009: Discovery/DA Notes.

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 22, 2007
Introduced by:	Sen. Rand	**Summary by:**	Hal Pell
Version:	PCS to First Edition S1009-CSRK		Committee Co-Counsel

SUMMARY: ***This act amends the discovery laws to provide the circumstances under which the State must disclose witness interview notes, and witness identifying information. This act is effective when it becomes law, and would apply to pending cases.***

CURRENT LAW: The criminal discovery laws provide for disclosure by the State of the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant.

BILL ANALYSIS: This act would amend the discovery statutes to:

- Provide that a prosecuting attorney is not required to make notes of a witness interview for disclosure to the defendant unless the information is new or significantly different from a prior statement by the witness.
- Provide that the State is not required to disclose the identity of a confidential informant under the discovery statute.
- Require the State to disclose only the following personal identifying information of a witness: name, address, date of birth, and published phone number. The defendant could seek additional information by motion to the court, on the grounds that it is necessary to accurately identify and locate the witness.

EFFECTIVE DATE: This act is effective when it becomes law, and applies to pending cases.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 466

Short Title:	Amend Concealed Weapons Law.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary 1 (Civil).	

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING CONCEALED WEAPONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269 reads as rewritten:

"**§ 14-269. Carrying concealed weapons.**

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, switchblade knife, ballistic knife, machete, slingshot, blackjack, throwing star, oriental dart, or other ~~deadly~~ weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any ~~pistol or gun~~ pistol, gun, air or gas operated pistol or gun, or any object similar in appearance, whether capable of being fired or not, except in the following circumstances:

(1) The person is on the person's own premises.

(2) The ~~deadly~~ weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(3) The ~~deadly~~ weapon is a handgun and the person is a military permittee as defined under G.S. 14-415.10(2a) who provides to the law enforcement officer proof of deployment as required under G.S. 14-415.11(a).

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

~~(b1) It is a defense to a prosecution under this section that:~~

~~(1) The weapon was not a firearm;~~

~~(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;~~

~~(3) The defendant possessed the weapon for that legitimate use; and~~

~~(4) The defendant did not use or attempt to use the weapon for an illegal purpose.~~

~~The burden of proving this defense is on the defendant.~~

(b2) It is a defense to a prosecution under this section that:

(1) The deadly weapon is a handgun;

(2) The defendant is a military permittee as defined under G.S. 14-415.10(2a); and

(3) The defendant provides to the court proof of deployment as defined under G.S. 14-415.10(3a).

(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, "ordinary pocket knife" means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 466
PROPOSED COMMITTEE SUBSTITUTE S466-CSRK-27 [v.5]

5/21/2007 2:42:52 PM

Short Title: Amend Concealed Weapons Law. (Public)

Sponsors:

Referred to:

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING CONCEALED WEAPONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269 reads as rewritten:

"**§ 14-269. Carrying concealed weapons.**

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his or her person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, switchblade knife, ballistic knife, slingshot, blackjack, throwing star, oriental dart, or other ~~deadly~~ weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his or her person any ~~pistol or gun~~ pistol, gun, air or gas operated pistol or gun, or any object similar in appearance, whether capable of being fired or not, except in the following circumstances:

(1) The person is on the person's own premises.

(2) The ~~deadly~~ weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(3) The ~~deadly~~ weapon is a handgun and the person is a military permittee as defined under G.S. 14-415.10(2a) who provides to the law enforcement officer proof of deployment as required under G.S. 14-415.11(a).

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States;

(3) Officers and soldiers of the militia and the national guard when called into actual service;
(4) Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;
(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

(b1) It is a defense to a prosecution under this section that:
~~(1) The weapon was not a firearm;~~
(2) The defendant was engaged in, or on the way to or from, an activity in which he or she legitimately used the weapon;
(3) The defendant possessed the weapon for that legitimate use; and
(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(b2) It is a defense to a prosecution under this section that:
(1) The deadly weapon is a handgun;
(2) The defendant is a military permittee as defined under G.S. 14-415.10(2a); and
(3) The defendant provides to the court proof of deployment as defined under G.S. 14-415.10(3a).

(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, "ordinary pocket knife" means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SENATE BILL 466: Amend Concealed Weapons Law

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	May 22, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to First Edition S466-CSRK-27[v.5]		

SUMMARY: ***Senate Bill 466 would add the following to the list of weapons unlawful to carry concealed: switchblade knife, ballistic knife, slingshot, blackjack, throwing star, oriental dart, air or gas operated pistol or gun, or objects similar in appearance to pistols or guns, whether capable of being fired or not. Would eliminate the requirement that the weapon not be a firearm from the defense of legitimate use.***

The PCS removes machetes from the list of weapons added to G.S. 14-269(a) and restores the defense of legitimate use removed in the first edition.

CURRENT LAW: G.S. 14-269 makes it unlawful to carry certain concealed weapons as follows:

Concealed Weapons:

G.S. 14-269(a) makes it unlawful to willfully and intentionally carry concealed a bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when on a person's own premises.

G.S. 14-269 (a1) makes it unlawful to willfully and intentionally carry concealed a pistol or gun, except in the following circumstances:

- Person is on own premises.
- The deadly weapon is a handgun and the person has a valid concealed handgun permit.
- The deadly weapon is a handgun and the person is a military permittee with proof of deployment.

Exceptions: The concealed weapons law does not apply to:

- Members of the military carrying weapons as part of their official duty.
- Civil and law enforcement officers of the United States.
- Members of the National Guard when called into actual service.
- Officers of the State or county, city, town, or company police agencies when acting in discharge of official duties.
- Sworn law-enforcement officers when off-duty, but not while consuming alcohol or unlawful controlled substances and while those substances remain in the officer's body.
- This section does not apply to ordinary pocket knives carried in a closed position. A pocket knife is defined as a small knife designed for carrying in a purse or pocket that has the cutting edge entirely closed by the handle and that may not be opened by a throwing, explosive, or spring action.

Defenses:

- Legitimate Use: The defendant must meet the burden of proof to show that:
  1. The weapon was not a firearm,
  2. The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon,
  3. The defendant possessed the weapon for that legitimate use, and
  4. The defendant did not use or attempt to use the weapon for an illegal purpose.
- Military Deployment: The defendant shows that:
  1. The deadly weapon is a handgun.
  2. The defendant is a military permittee.
  3. The defendant provides proof of deployment to the court.

- Violations of subsection (a) are a Class 2 misdemeanor. Violation of subsection (a1) are a Class 2 misdemeanor for a first offense, and a Class I felony for a second or subsequent offense.

BILL ANALYSIS: Senate Bill 466 would:

- Add the following weapons to the list of weapons unlawful to conceal under G.S. 14-269(a): switchblade knife, ballistic knife, slingshot, blackjack, throwing star, and oriental dart.
- Eliminate the modifier "deadly" from the phrase "or other deadly weapons of like kind" in the list of weapons unlawful to conceal.
- Expand the list of weapons unlawful to conceal under G.S. 14-269(a1) to include air or gas operated pistols or guns, or any object similar in appearance, whether capable of being fired or not.
- Eliminate the modifier "deadly" in the phrase "deadly weapon" as used in the exceptions to G.S. 14-269(a1).
- Eliminates the requirement that the weapon was not a firearm from the defense for legitimate use of the weapon.

EFFECTIVE DATE: This bill would become effective on December 1, 2007 and apply to all offenses committed on or after that date. Prosecutions for offenses committed before the effective date would not be abated or affected by the act and the statutes that would be applicable but for the bill would remain applicable to those prosecutions.

S0466e1-SMTC-CSTC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 10:00 a.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Brough	Brough Law Firm - 1829 E Franklin St Chapel Hill
Jon Cherry	NCATL
BRAD BANNON	NCATL
Sam Thompson	Wilmington Police
Sam Roche	Wilmington Police
Marshall Williamson	Wilmington Police
[illegible]	[illegible]
Marc Brenner	Brooks Pierce
Roz Savitt	NC Child Care Coalition
Chris Fitzsimon	NC Policy Watch
David Anders	PFF-PAC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 10:00 a.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Dunn	NC Policy Watch
[signature]	DHHS
Sara Mims	DHHS/DSS
Tammy Johnson	DHHS/DSS
Garry Frank	District Attorney #22
Clark Everett	District Attorney # 3-A
Robert Young Black	GRNC
Jeff Rau	Grass Roots NC
Andy Munn	REBIC
Alastair Macaulay	NCHBA
[signature]	NCACC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 10:00 a.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christine Wunsche	10G - Daily Bulletin
Erin Kinney	NC Conservation Network
Jeff Gray	Fraternal Order of Police
Colon Willoughby	DA 10th Dist.
Ron Sousa	Conference of DAs
Mike Bonfoey	District 7 Harnett 30th
Rick Shaffer	District Attorney - 27B
Phil Berger, Jr.	Dist. Attorney - 17A
Bill Graham	DA - 6A
Ron Moore	DA - 13
Emily Doyle	NCPAPA

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 10:00 a.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas Moore	Edwiston & Webb
Stephanie Nentz	DOA/NAHO
Tony Queen	NCVAN
Barbara Moore	Conf. of Clerks of Superior Ct.
John Madler	NC Sentencing Commission
Daniel Baum	Kennedy Covington
Anthony Roulette	NRA
Fred Bone	Bone & Asso.
Kristen Rowe	District Attorney's Office 9A
Joe Brewer	DA 9A
Bryce Ball	Fiscal Research

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 10:00 a.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCFDC
Don McCorquodale	AIS
Doug Heron	NC BAR ASSOCIATION
Todd Barlow	NCATL
EC Sprunt	DOT
[signature]	NCDOA
Casandra White	Gov. Office
Lisa Kimbrough	NCCASA
Hilary Cooper	NCCASA
Kim McLeod	CFSA-NC
David Crawford	AIA

SENATE JUDICIARY I COMMITTEE
(Civil)

May 22, 2007
2:00 p.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met three times on Tuesday, May 22 at 10:00 a.m., 2:00 p.m. and after the legislative session adjourned. A quorum was present at all three meetings.

Chairman Nesbitt called the 2:00 p.m. meeting to order.

The following bills were scheduled to be heard before the Committee at that meeting:

SB 8	**Expand Safe Zones/Schools, Parks, Child Centers**	**(Senator Boseman)**
SB 17	**Up Penalties/Sex Offenses with Child Victim**	**(Senator Boseman)**
SB 212	**Land-Use Permit Appeals**	**(Senator Kinnaird)**
SB 466	**Amend Concealed Weapons Law**	**(Senator Boseman)**
SB 925	**Create Beneficiary on Motor Vehicle Titles**	**(Senator Cowell)**
SB 1081	**Expunge Nonviolent Crimes**	**(Senator Weinstein)**
SB 1129	**Open Discovery/Access to Officers' Notes**	**(Senator Clodfelter)**
SB 1130	**Broad Open Discovery**	**(Senator Clodfelter)**
SB 1131	**Grand Jury Reform/Prosecutorial Misconduct**	**(Senator Clodfelter**
SB 1271	**Firefighter/EMS Payroll Deductions**	**(Senator Snow)**

Senator Nesbitt called upon Senator Clodfelter for discussion of his bills, 1129, 1130, and 1131. He told the committee that they would be rolled into one bill as a Proposed Committee Substitute to Senate Bill 1130. Extensive discussion followed and Senator Rand suggested that the PCS for 1130 should go to a Study Committee. The bill was temporarily displaced.

Senator Nesbitt recognized Senator Rand who presented a Proposed Committee Substitute to SB 925 to the committee and moved that it be adopted for consideration. The motion passed. He explained that the PCS to Senate Bill 925 will amend the statute

that provides for improper equipment as a lesser included offense, and limit the availability of a prayer for judgment continued for certain speeding offenses.

Senator Brunstetter moved for a favorable report for the PCS to SB 925, unfavorable as to original bill and the motion carried.

The Judiciary I Committee moved from Room 1027 to Room 1123 and discussion followed on Senate Bills 8, 17, 212, and 1271. All bills were carried over to the meeting that would occur after the adjournment of Session.

The meeting adjourned at 4:00 p.m.

Copies of Senate Bills 1129, 1130, 1131, 925, the Proposed Committee Substitute for SB 925, a Bill Analysis for the PCS to SB 925, 8, 212, and 1271 are attached to these Minutes as Attachment 1, 2, 3, 4, 5, 6, 7, 8, and 9 respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1129

Short Title:	Open Discovery/Access to Officers' Notes.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT CLARIFYING THAT DEFENDANTS MUST HAVE ACCESS TO ALL LAW ENFORCEMENT NOTES IN THE OPEN DISCOVERY PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903(a)(1) reads as rewritten:

"(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. The term "officer note" includes any handwritten note taken by the officer in the investigation of offenses alleged to have been committed by the defendant. Oral statements shall be in written or recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein."

SECTION 2. G.S. 15A-910(a) reads as rewritten:

"(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers ~~may~~may:

(1) Order the party to permit the discovery or ~~inspection, or~~inspection.

(2) Grant a continuance or ~~recess, or~~recess.

(3) Prohibit the party from introducing evidence not ~~disclosed, or~~disclosed, and if the evidence is a police officer's testimony the court may disallow material uncorroborated by personal contemporaneous

officer's notes and contradicting the contemporaneous notes of other officers.

(3a) Declare a ~~mistrial, or~~mistrial.

(3b) Dismiss the charge, with or without ~~prejudice, or~~prejudice.

(4) Enter other appropriate orders."

SECTION 3. This act becomes effective October 1, 2007.

Attachment 2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1130

Short Title:	Broaden Open Discovery.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT CLARIFYING THAT DEFENDANTS MUST HAVE ACCESS TO THE COMPLETE FILES OF ALL LAW ENFORCEMENT AND PROSECUTORIAL AGENCIES IN THE OPEN DISCOVERY PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903(a)(1) reads as rewritten:

"(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the prosecution of the defendant. Oral statements shall be in written or recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein."

SECTION 2. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1131

Short Title: Grand Jury Reform/Prosecutorial Misconduct. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I (Civil).

March 22, 2007

A BILL TO BE ENTITLED

AN ACT ALLOWING A GRAND JURY TO REPORT POSSIBLE PROSECUTORIAL MISCONDUCT OR ANY OTHER MATTER THAT COULD ADVERSELY AFFECT THE INDEPENDENCE, FAIRNESS, AND IMPARTIALITY OF THE GRAND JURY AND REQUIRING A WRITTEN RECORD OF ALL GRAND JURY PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-623 is amended by adding a new subsection to read:

"(i) All proceedings of the grand jury shall be recorded and transcribed. Records and transcriptions of grand jury proceedings are not public records under Chapter 132 of the General Statutes."

SECTION 2. G.S. 15A-628 is amended by adding a new subdivision to read:

"(6) May confer with, and report to, the presiding or convening judge concerning possible prosecutorial misconduct or any other matter that could adversely affect the independence, fairness, and impartiality of the grand jury."

SECTION 3. Article 31 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-632. Reporting prosecutorial misconduct and other matters.**

Notwithstanding G.S. 15A-623 or any other provision of law, the grand jury may, after consultation with the presiding or convening judge and only with that judge's permission, report to federal law enforcement authorities on prosecutorial misconduct and any other matter that could adversely affect the independence, fairness, and impartiality of the grand jury."

SECTION 4. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 925

Short Title:	Create Beneficiary on Motor Vehicle Titles.	(Public)
Sponsors:	Senator Cowell.	
Referred to:	Commerce, Small Business and Entrepreneurship.	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A TRANSFER ON DEATH PROVISION FOR MOTOR VEHICLES TITLED IN NORTH CAROLINA TO ALLOW BENEFICIARIES TO TAKE TITLE OF THE MOTOR VEHICLE UPON THE DEATH OF AN OWNER OR OWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-57(e) reads as rewritten:

"**§ 20-57. Division to issue certificate of title and registration card.**

...

(e) The certificate of title shall contain upon the reverse side an assignment of title or interest and warranty by registered owner or registered dealer. The purchaser's application for North Carolina certificate of title shall be made on a form prescribed by the Commissioner and shall include a space for notation of liens and encumbrances on the vehicle at the time of transfer. The certificate of title shall contain upon the reverse side a place for the registered owner or owners to provide the name of a beneficiary for a transfer on death, pursuant to Article 9 of Chapter 47 of the General Statutes, of any interest held by the owner or owners in the motor vehicle. The designation shall state the beneficiary is entitled to any interest held by the owner or owners and is to be transferred on death. This transfer shall be subject to any liens attached by law or any security interest properly recorded and perfected on the title pursuant to G.S. 20-58. The rights of any lienholder shall not be affected by the designation of a beneficiary under this section or Article 9 of Chapter 47 of the General Statutes. Nothing in this subsection shall require the designation of a beneficiary.

..."

SECTION 2. Chapter 47 of the General Statutes is amended by adding a new Article to read:

"Article 9.

"Transfer of Motor Vehicles on Death.

"**§ 47-121. Motor vehicles; transfer-on-death.**

A motor vehicle, as defined by G.S. 20-4.01(23), which is required to be titled under Chapter 20 of the General Statutes, may be titled in transfer-on-death, TOD, form by including on the certificate of title a designation of a beneficiary or beneficiaries to whom the motor vehicle shall be transferred on death of the owner or the last survivor of the joint tenant with right of survivorship owners, subject to the rights of all lienholders. Nothing in this Article shall require the designation of a beneficiary on a certificate of title.

"**§ 47-122. Designation of a beneficiary on the certificate of title.**

A motor vehicle is registered in transfer-on-death form by designating on the certificate of title the name of a beneficiary in the place provided on the certificate of title for such designation by the Division of Motor Vehicles.

"**§ 47-123. Beneficiaries; interest; change.**

The transfer-on-death beneficiary or beneficiaries shall have no interest in the motor vehicle until the death of the owner or the last survivor of the joint tenant with right of survivorship owners. A beneficiary designation may be changed at any time by the owner or all of the joint tenants with right of survivorship owners then surviving, without the consent of the beneficiary or beneficiaries, by filing an application for a subsequent certificate of title. An application for a new title to change a beneficiary is subject to the application and fee provisions for certificates of title provided in Chapter 20 of the General Statutes.

"**§ 47-124. Vesting of ownership in beneficiary.**

Ownership of a motor vehicle titled in transfer-on-death form, for which an application for a subsequent certificate of title has not been filed, shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last of the joint tenants with right of survivorship owners, subject to the rights of all lienholders.

"**§ 47-125. Nontestamentary disposition.**

A certificate of title in transfer-on-death form shall not be considered a testamentary disposition or be invalidated due to nonconformity with the provisions of Chapter 31 of the North Carolina General Statutes."

SECTION 3. This act becomes effective January 1, 2008, and applies to all titles issued or reissued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 925
PROPOSED COMMITTEE SUBSTITUTE S925-CSRK-39 [v.3]

5/22/2007 9:46:18 AM

Short Title: Speeding Law Changes. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW ALLOWING IMPROPER EQUIPMENT AS A LESSER INCLUDED OFFENSE OF SPEEDING AND TO PRECLUDE A PRAYER FOR JUDGMENT CONTINUED AS A DISPOSITION WHERE A DRIVER EXCEEDS THE POSTED SPEED LIMIT BY MORE THAN 30 MILES PER HOUR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141(o) reads as rewritten:

"**§ 20-141. Speed restrictions.**

. . .

(o) A violation of G.S. 20-123.2 shall be a lesser included offense in any violation of this ~~section~~section, with all of the following limitations and conditions:

(1) The violation of G.S. 20-123.2 shall be recorded in the driver's official record as "Improper equipment – Speedometer."

(2) A driver shall only be eligible for two violations of G.S. 20-123.2 as a lesser included offense under this section in a five year period.

(3) A driver charged with speeding in excess of thirty miles per hour over the posted limit shall be ineligible for the lesser included offense provided in this section.

No drivers license points or insurance surcharge shall be assessed on account of a violation of this subsection."

SECTION 2. G.S. 20-141 is amended to add a new subsection, to read:

"(p) A driver charged with speeding in excess of thirty miles per hour over the posted speed limit shall be ineligible for a disposition of prayer for judgment continued."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 925: Speeding Law Changes.

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 22, 2007
Introduced by:		**Summary by:**	Hal Pell
Version:	PCS to First Edition S925-CSRK		Committee Co-Counsel

*SUMMARY: **This act will amend the statute that provides for improper equipment as a lesser included offense, and limit the availability of a prayer for judgment continued for certain speeding offenses. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.***

CURRENT LAW: Improper equipment is a lesser-included offense for a speeding violation. There are no limitations on the number of times a person may be found guilty of the lesser-included offense, and there is no annotation on the person's driving record of the violation.

BILL ANALYSIS: This act would limit the availability of improper equipment as a lesser-included offense of speeding as follows:

- A driver would only be eligible for the violation as a lesser-included offense twice within a five year period.
- The violation would be recorded in the driver's official record with the Department of Motor Vehicles.
- The violation would not be available if the driver was speeding more than 30 miles per hour over the posted speed limit.

The bill would also preclude a judge from granting a prayer for judgment continued where the driver had exceeding the posted speed limit by more than 30 miles per hour.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 8

Short Title:	Expand Safe Zones/Schools, Parks, Child Ctrs.	(Public)
Sponsors:	Senators Boseman; Cowell, Jenkins, Kinnaird, and Snow.	
Referred to:	Judiciary 1 (Civil).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE "SAFE ZONES" NEAR CHILD CARE CENTERS AND SCHOOL GROUNDS REGARDING ILLEGAL DRUG SALES FROM THREE HUNDRED FEET TO ONE THOUSAND FEET, TO EXPAND THE "SAFE ZONE" FOR PUBLIC PARKS TO INCLUDE ALL PUBLIC PARKS, NOT JUST THOSE WITH PLAYGROUNDS AND TO INCREASE THE DISTANCE OF THOSE SAFE ZONES TO ONE THOUSAND FEET, TO INCREASE THE PENALTIES FOR CARRYING A DEADLY WEAPON ON EDUCATIONAL PROPERTY, AND TO MAKE IT A CRIMINAL OFFENSE TO POSSESS OR CARRY A GUN, RIFLE, OR PISTOL IN A PUBLIC PARK, IN ANY CHILD CARE CENTER, OR ON ANY PLAYGROUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(e) reads as rewritten:

"(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the

current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for a child care center, or for an elementary or secondary school or within ~~300~~1,000 feet of the boundary of real property used for a child care center, or for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). For purposes of this subdivision, a child care center is as defined in G.S. 110-86(3)a., and that is licensed by the Secretary of the Department of Health and Human Services.

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(10) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property that is a ~~playground in a~~ public park or within ~~300~~1,000 feet of the boundary of real property that is a ~~playground in a~~ public park shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). ~~For purposes of this subdivision the term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation open to the public, and with any portion thereof containing three or more separate apparatuses~~

~~intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.~~"

SECTION 2. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a ~~Class I~~ Class H felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(b1) It shall be a ~~Class G~~Class F felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property or to a curricular or extracurricular activity sponsored by a school. This subsection shall not apply to fireworks.

(c) It shall be a ~~Class I~~Class H felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a ~~Class G~~ Class F felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1 on educational property. This subsection shall not apply to fireworks.

(d) It shall be a ~~Class 1~~ Class A1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any

sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a ~~Class 1~~Class A1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this section it shall be a ~~Class 1~~Class A1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property or to a curricular or extracurricular activity sponsored by a school if:

(1) The person is not a student attending school on the educational property or an employee employed by the school working on the educational property; and

(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and

(2) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(3) The firearm is not loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

(4) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(1a) A person exempted by the provisions of G.S. 14-269(b);

(2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties;

(3) Home schools as defined in G.S. 115C-563(a); or

(4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.

(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 3. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-269.5. Possessing or carrying firearms in public parks, in child care centers, or on playgrounds.**

(a) Definitions. – The following definitions apply in this section:

(1) Child care center. – A child care center as defined in G.S. 110-86(3)a., and that is licensed by the Secretary of the Department of Health and Human Services.

(2) Playground. – Any outdoor facility (including any parking lot appurtenant thereto) intended for recreation open to the public, and with any portion thereof containing three or more separate apparatuses intended for the recreation of children including, but not limited to, sliding boards, swing sets, and teeterboards.

(b) Offense. – It is unlawful for any person to possess or carry, whether openly or concealed, any gun, rifle, or pistol in any public park, in any child care center, or on any playground.

(c) Exemptions. – This section shall not apply to the following:

(1) A person exempted by the provisions of G.S. 14-269(b).

(2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police or security guard employed by the owner, lessee, or manager of the playground or child care facility, when acting in the discharge of their official duties.

(d) Penalty. – Any person violating this section is guilty of a Class 1 misdemeanor."

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 212

Short Title:	Land-Use Permit Appeals.	(Public)
Sponsors:	Senators Kinnaird; and Clodfelter.	
Referred to:	Judiciary I	

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals to superior court by proceedings in the nature of certiorari authorized under the provisions of this Article.

(b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall state the facts that demonstrate that the petitioner has standing to seek review and shall set forth the grounds upon which the petitioner contends that an error was made as well as the relief the petitioner seeks. The facts in support of allegations that the votes of one or more members of the decision-making body were affected by impermissible bias or conflict of interest shall be set forth with particularity.

(c) Standing. – A petition may be filed under this section only by a person who has standing to challenge the decision being appealed. A person has standing if a reasonable person in the position of the person seeking to challenge the decision could reasonably conclude that the use of the property authorized by the decision would be likely to adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public. Without limiting the generality of the foregoing, the following principles shall apply in determining whether a petitioner has standing:

(1) If the decision being appealed involves a denial of a permit request, a denial of a variance, or a determination that property is being used in violation of an ordinance adopted under this Article, then any person

with an ownership or leasehold interest in the property in question, as well as the applicant for the permit or the variance (if different than the owner), has standing to file a petition.

(2) If the decision being appealed involves the issuance of a permit, the granting of a variance, or a determination that property is being used in conformity with an ordinance adopted under this Article, then the following persons shall have standing to file a petition, so long as they satisfy the general criteria set forth at the beginning of this subsection:

a. Any person who resides or owns property in such close proximity to the property that is the subject of the decision that the use of the property authorized by the decision would adversely affect that person's use or enjoyment of his or her residence or property or would adversely affect the value of that property.

b. Any person whose economic interests are directly threatened by the use authorized by the decision.

c. A property owners', neighborhood, or similar civic association if any of its members would have standing to challenge the decision as an individual, the interests sought to be protected are germane to the association's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members who would have standing.

For purposes of this subsection, the term "person" refers to any legal entity authorized to bring suit in his, her, or its own name, and the term "owner" refers to any person having an ownership interest in property.

(d) Respondent. – The respondent named in the petition shall be the city whose council, board of adjustment, planning board, or other body made the decision that is being appealed. If the petitioner is not the applicant before the council, board of adjustment, or planning board whose decision is being appealed, the petitioner shall name that applicant as a respondent. Any petitioner may, but need not, also name as a respondent any person who participated in the hearing before the council, board of adjustment, or planning board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(f) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to

bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section, except that:

(1) If the petitioner is not the applicant before the council, board of adjustment, or planning board whose decision is being appealed and the petitioner fails to name the applicant as a respondent, then the applicant may intervene as a matter of right.

(2) Except as otherwise stated in subdivision (1) of this subsection, an intervenor must demonstrate that a reasonable person in the position of the intervenor could reasonably believe that the outcome of the appeal could adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public.

(h) The Record. – The record shall consist of all documents and exhibits submitted to the council, planning board, or board of adjustment whose decision is challenged, together with the minutes of the meeting or meetings at which the matter appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the matter appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section, except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if and to the extent that the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of bias or conflict of interest, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

(1) When reviewing the decision of a city council, board of adjustment, or planning board under the provisions of this section, the trial court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including, but not limited to, those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the municipality or the authority conferred upon the decision-making body by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making body below erred in the interpretation of an ordinance, the trial court may review that issue de novo, provided that the court shall give due consideration to the construction adopted by those entities charged with execution and administration of the ordinance where that construction has been thoroughly considered and consistently applied by those entities.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making body on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that were reasonable for the decision-making body to rely upon it. Notwithstanding the foregoing, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses (i.e., persons not qualified by reason of specialized knowledge, skill, experience, training, or education to testify as an expert) as to matters about which only expert testimony would generally be admissible under the rules of evidence. By way of illustration without limitation, the term "competent evidence" shall not be deemed to include the opinion of lay witnesses as to whether (i) the use of property in a particular way would affect the value of other property, or (ii) the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

(k) Decision of the Trial Court. – Following its review of the decision-making body in accordance with subsection (j) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or

remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making body is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making body has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision below is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the council, board of adjustment, or planning board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Without limiting the generality of the foregoing, (i) if the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued; and (ii) if the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. By way of illustration without limitation, if the court affirms the decision of a board of adjustment that a petitioner is in violation of a zoning ordinance, the court may issue an order enjoining the petitioner from continuing the violation."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

Whenever appeals to superior court by proceedings in the nature of certiorari are authorized under the provisions of this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals. In this context, the term "city council," as used in G.S. 160A-393, shall be deemed to refer to the "board of commissioners," and the term "city" or "municipality" shall be deemed to refer to the "county."

SECTION 2.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-377. Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a designated planning board (other than a planning board comprised solely of members of a city planning staff) and the ordinance authorizes the council or planning board to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c) and G.S. 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, designated planning board, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the council or planning board to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the council or planning board; or (ii) authorizes the council or planning board to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 2.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-336. Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a designated planning board (other than a planning board comprised solely of members of a county planning staff) and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f) and G.S. 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory

or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the board of commissioners or planning board to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the board of commissioners or planning board; or (ii) authorizes the board of commissioners or planning board to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 3. This act becomes effective January 1, 2008, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S **1**

SENATE BILL 1271

Short Title:	Firefighter/EMS Payroll Deductions.	(Public)
Sponsors:	Senator Snow.	
Referred to:	State & Local Government.	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PAYROLL DEDUCTIONS FOR CERTAIN EMERGENCY MEDICAL PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Certain Deductions Authorized. – A public safety employer shall make a payroll deduction upon the request of the employee for the membership dues of any firefighter and emergency medical services personnel organization that represents a majority of eligible employees in the employer's department.

SECTION 2. Definitions. – The following definitions apply in this act:

(1) Emergency medical services personnel. – An individual who provides out of hospital emergency medical care, including an emergency medical technician, paramedic, or first responder.

(2) Employee. – A firefighter or the emergency medical services personnel employed by the employer.

(3) Employer or public safety employer. – Any city, town, county, or other municipality or political subdivision of the State that employs public safety officers.

(4) Firefighter. – An individual employed by a fire department who does any of the following:

a. Primarily performs work directly related to the control and extinguishment of fires.

b. Is responsible for the maintenance and use of firefighting apparatus and equipment, for fire prevention and investigation, or for communications and dispatch.

c. Provides emergency medical care.

SECTION 3. Effective Date. – This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 2:00 p.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
William E. Lolak	City of Wilmington, NC
Marshall Williamson	City of Wilm Police
S.D Roche	Wilmington Police
S.S. Thompson	Wilmington Police Dept.
J Miller	DAPS
Eddie Caldwell	NC Sheriffs' Assn.
Kim Hibbard	NCLM
Tony Quick	NCVAN
Gary McDowell	NCDOT
Rick Zechini	NC Assn. of Realtors
Lisa Martin	NC Home Builders

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 2:00 p.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alastair Mackay	NCHBA
Andy Munn	RESCC
Katherine Joyce	NCASA
CHIP ROTH	TEAMSTERS
Kevin Daly	ACLU-NC
Richard O'Brien	PFFDNC
Richard Westbrook	UTU
JOHN C. MIDGETTE	NC PBA
Jeff Rau	GRNC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 2:00 p.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Baum	Kennedy Lovington
John McKay	Gov Office
[illegible]	FCHS
Paul Anders	PFFPNC
John McMillan	NFHS
Roz Sawyer	NCCC
Jim Elliott	DHHC
Reg Dorer	Conference of DAs
Lex Dore	DA 13

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 2:00 p.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Shaffer	12th Jud. Dist. (Cleveland) DISTRICT ATTORNEY 27B
Mike Bonfoey	District Attorney 30th
Phil Berger, Jr.	Dist. Attorney - 17A
Jon Ropell	NC Family Policy Council
Amber Lucken Barwick	NC Conference of DAs
Kimberly Wilhelm	NC Conference of DAs
Bill Graham	DA 6-A
Barbara Moore	Conf. of Clerks of Sup. Court.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — 2:00 p.m. — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christine Wunsche	NCG - Dooley Burlington
Kevin Leonard	WCSR
Fred Allen	NC Aggregates Assn
Andy Ellen	NCPWA
Joe Stewart	IFNC
[illegible]	NC Rural Center
John Goodman	NC Chamber
Butch Gunnells	NC Bev. A.
Grant Eagan	NMRS

SENATE JUDICIARY I COMMITTEE
(Civil)

May 22, 2007
Immediately After Session –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met three times on Tuesday, May 22 at 10:00 a.m., 2:00 p.m. and immediately after the legislative session adjourned. A quorum was present at all three meetings.

Chairman Nesbitt called the 5:00 p.m. meeting to order.

The following bills were scheduled to be heard before the Committee at that meeting:

SB 8	**Expand Safe Zones/Schools Parks, Child Ctrs**	**Senator Boseman**
SB 17	**Up Penalties/Sex Offenses With Child Victim.**	**Senator Boseman**
SB 212	**Land-Use Permit Appeals**	**Senator Kinnaird**
SB 1081	**Expunge Nonviolent Crimes.**	**Senator Weinstein**
PCS SB1130	**Open Discovery/Grand Jury Transcripts**	**Senator Clodfelter**
SB 1271	**Firefighter/EMS Payroll Deductions**	**Senator Snow**

He recognized Senator Snow to explain SB 1271 why it had been referred to Committee from the Senate Floor. A Proposed Committee Substitute was distributed to the members. Senator Soles moved to adopt the PCS for consideration and the motion passed.

Senator Snow said that the new PCS adds the similar language to the chapters governing counties and cities to require those entitles to allow payroll deduction for:

1. Membership dues of any firefighter and emergency medical services personnel organization that represents a majority of eligible employees in the employer's department.
2. Membership dues of any law enforcement organization or association that has at lease 2,000 members Statewide.
3. Membership dues of an employee organization or association that has at least 2,000 members statewide, 500 of which are law enforcement officers.

The authorization for the deduction must be in a signed writing and remains in effect until revoked.

Senator Soles moved to give the PCS to the 3rd Edition of SB 1271 a favorable report, unfavorable to original bill. The motion carried.

Senator Rand was recognized and informed the committee that he was recalling the vote on the PCS to SB 1271 and the bill was displaced.

The PCS to Senate Bill 8 that was adopted at an earlier meeting of the Committee was before the Committee and staff was asked to explain. Committee Counsel, Hal Pell, was recognized. He told the committee that this bill would increase the boundary limit from 300 feet to 1,000 feet around specified locations where the penalty for drug sales would be classified as a Class E. Felony. This law has no age limitations.

Senator Berger questioned the constitutionality of the original law. Discussion followed.

Senator Rand moved to give the PCS a favorable report, unfavorable to the original bill. The motion passed.

Senate Bill 17 was before the Committee for consideration. A Proposed Committee Substitute was distributed to the members, and Senator Rand moved that it be adopted. The motion carried.

Committee, Hal Pell, was recognized to explain the PCS. He said the bill would amend the pretrial release statute that is applicable to sex offenses by making the conditional terms mandatory, unless the court makes specific findings. The act becomes effective December 1, 2007, and applies to offenses committee on or after that date.

Senator Rand moved for a favorable report for the PCS to SB 17, unfavorable to original bill and the motion carried.

Senate Bill 1130 was before the committee and Senator Clodfelter, the bill sponsor, was recognized to explain the bill. A Proposed Committee Substitute to 1130 was distributed to the members and Senator Clodfelter moved that it be adopted for consideration. The motion carried. He said that the committee substitute just dropped Section 2 of the bill and he expects to continue to work on the bill as it moves forward.

Senator Rand moved to give the PCS a favorable report, unfavorable to original bill, and the motion carried.

Senator Nesbitt told the Committee that Senate Bill 1081, sponsored by Senator Weinstein, would be discussed, but because the bill would need to go to the Senate Finance Committee, it was not subject to the crossover deadline and no vote would be taken today.

Senator Weinstein was recognized to explain the bill. A Proposed Committee Substitute was distributed to the members and Senator Soles moved that it be adopted for consideration. The motion passed.

Senator Clodfelter proposed to amend the bill on Page 2, line 39 by deleting the number "10", and substituting the number, "30." Secondly, to amend the bill on Page 3, lines 41-42 #6, by inserting, "to local school boards for hiring purposes only". As there were no copies of the amendment available for the members, or the Committee Assistant, Senator Nesbitt read it aloud. The motion to adopt the amendment passed.

Senator Weinstein shared with the members that he has been trying to get this legislation passed for approximately eight years, to no avail.

There was discussion to appoint a subcommittee to work with Senator Weinstein on this legislation. Senators Soles, Chair, Berger, Graham, Brunstetter, and Brunstetter were appointed to the subcommittee. The bill was displaced.

Senate Bill 1271 was back before the committee. Senator Rand moved to amend the bill and the motion carried. Senator Rand moved that the bill and amendment be rolled into a new committee substitute and that it be given a favorable report, unfavorable to the original bill. The motion passed.

Senator Kinnaird was recognized to discuss Senate Bill 212. A new Proposed Committee Substitute was distributed and Senator Kinnaird moved that it be adopted. Senator Clodfelter moved to amend the bill. Senator Kinnaird said that all parties involved with this bill are on-board with the new bill. The bill was temporarily displaced.

SenateBill 67 was before the committee, and Senator Boseman was recognized to discuss the bill. She said the bill was to clarify types of nuisances wherein obscene or lewd matter or other conduct prohibited is involved.

Senator Rand wondered if this could cause a business to be padlocked. Committee Staff, Bill Gilkeson, said it would. The bill was displaced.

SB 212 was back before the meeting. Senator Kinnaird was recognized and asked Committee Staff Erika Churchill to explain an amendment offered by Senator Clodfelter.

Senator Rand moved to adopt the amendment and the motion carried.

A spokesman from the League of Municipalities said they had no problem the bill moving forward and would continue to work on the bill as it proceeded through the legislative process.

Senator Rand moved to incorporate the amendment into a new Committee Substitute, give that bill a favorable report, unfavorable as to the original bill. The motion carried.

The meeting adjourned at 5:50 p.m.

Copies of Senate Bill 1271, a Proposed Committee Substitute for SB 1271, a Bill Analysis for the PCS to SB 1271 the Rand Amendment for the PCS for SB 1271, Senate Bill 8, a Proposed Committee Substitute to SB 8, a Bill Analysis for the PCS to SB 8, Senate Bill 17, a Proposed Committee Substitute to SB17, a Bill Analysis for the PCS to SB 17, Senate Bill 1130, a Proposed Committee Substitute for SB 1130, a Bill Analysis for the PCS to SB 1130, Senate Bill 1081, a Proposed Committee Substitute to SB 1081, a Bill Analysis for the PCS to SSB 1081, Senate Bill 212, a Proposed Committee Substitute for SB 212, the Clodfelter Amendment to SB 212, a Bill Analysis for the PCS to SB 212 and Senate Bill 67 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 respectively.

Respectfully submitted,



Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

Attachment 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1271

Short Title:	Firefighter/EMS Payroll Deductions.	(Public)
Sponsors:	Senator Snow.	
Referred to:	State & Local Government.	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PAYROLL DEDUCTIONS FOR CERTAIN EMERGENCY MEDICAL PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Certain Deductions Authorized. – A public safety employer shall make a payroll deduction upon the request of the employee for the membership dues of any firefighter and emergency medical services personnel organization that represents a majority of eligible employees in the employer's department.

SECTION 2. Definitions. – The following definitions apply in this act:

(1) Emergency medical services personnel. – An individual who provides out of hospital emergency medical care, including an emergency medical technician, paramedic, or first responder.

(2) Employee. – A firefighter or the emergency medical services personnel employed by the employer.

(3) Employer or public safety employer. – Any city, town, county, or other municipality or political subdivision of the State that employs public safety officers.

(4) Firefighter. – An individual employed by a fire department who does any of the following:

a. Primarily performs work directly related to the control and extinguishment of fires.

b. Is responsible for the maintenance and use of firefighting apparatus and equipment, for fire prevention and investigation, or for communications and dispatch.

c. Provides emergency medical care.

SECTION 3. Effective Date. – This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1271

State & Local Government Committee Substitute Adopted 5/9/07
Third Edition Engrossed 5/10/07
PROPOSED COMMITTEE SUBSTITUTE S1271-CSST-60 [v.2]

5/18/2007 5:19:48 PM

Short Title: Firefighter/EMS Payroll Deductions. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PAYROLL DEDUCTIONS FOR CERTAIN EMPLOYEE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 4 of Article 5 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-92.1. Payroll deduction for payments to employee associations allowed.**

(a) Definitions. – The following definitions apply in this section:

(1) Emergency medical services personnel. – An individual who provides out-of-hospital emergency medical care, including an emergency medical technician, paramedic, or first responder.

(2) Employee. – Any county officer or employee paid by the county.

(3) Employer. – Any county or political subdivision of the State.

(4) Firefighter. – An individual employed by a fire department who does any of the following:

a. Primarily performs work directly related to the control and extinguishment of fires.

b. Is responsible for the maintenance and use of firefighting apparatus and equipment, for fire prevention and investigation, or for communications and dispatch.

c. Provides emergency medical care.

(5) Law enforcement officer. – An individual employed by a law enforcement employer who has the power of arrest and the power to enforce the criminal laws of the State.

(b) Certain Deductions Authorized. – The following deductions from an employee's compensation are authorized:

(1) An employer of emergency medical services personnel or firefighters shall make a payroll deduction upon the request of the employee for the membership dues of any firefighter and emergency medical services personnel organization that represents a majority of eligible employees in the employer's department.

(2) An employer of law enforcement officers shall make a payroll deduction upon the request of a law enforcement officer for a law enforcement organization or association that has at least 2,000 members statewide.

(3) An employer shall make a payroll deduction upon the request of the employee for the membership dues of an employee organization or association that has at least 2,000 members statewide, at least 500 of whom are law enforcement officers.

(c) Procedure for deduction. – The authorization for the deduction shall be provided in a signed writing and shall remain in effect until revoked. A written authorization for the deduction is required each time there is an increase in the amount of the membership dues deduction."

SECTION 2. Part 4 of Article 7 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-162.1. Payroll deduction for payments to employee associations allowed.**

(a) Definitions. – The following definitions apply in this section:

(1) Emergency medical services personnel. – An individual who provides out-of-hospital emergency medical care, including an emergency medical technician, paramedic, or first responder.

(2) Employee. – Any municipal officer or employee paid by the municipality.

(3) Employer. – Any municipality or political subdivision of the State.

(4) Firefighter. – An individual employed by a fire department who does any of the following:

a. Primarily performs work directly related to the control and extinguishment of fires.

b. Is responsible for the maintenance and use of firefighting apparatus and equipment, for fire prevention and investigation, or for communications and dispatch.

c. Provides emergency medical care.

(5) Law enforcement officer. – An individual employed by a law enforcement employer who has the power of arrest and the power to enforce the criminal laws of the State.

(b) Certain Deductions Authorized. – The following deductions from an employee's compensation are authorized:

(1) An employer of emergency medical services personnel or firefighters shall make a payroll deduction upon the request of the employee for the membership dues of any firefighter and emergency medical

services personnel organization that represents a majority of eligible employees in the employer's department.

(2) An employer of law enforcement officers shall make a payroll deduction upon the request of a law enforcement officer for a law enforcement organization or association that has at least 2,000 members statewide.

(3) An employer shall make a payroll deduction upon the request of the employee for the membership dues of an employee organization or association that has at least 2,000 members statewide, at least 500 of whom are law enforcement officers.

(c) Procedure for deduction. – The authorization for the deduction shall be provided in a signed writing and shall remain in effect until revoked. A written authorization for the deduction is required each time there is an increase in the amount of the membership dues deduction."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 1271:
Firefighter/EMS Payroll Deductions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 18, 2007
Introduced by:	Sen. Snow	**Summary by:**	R. Erika Churchill
Version:	PCS to Third Edition S1271-CSST-60		Committee Counsel

SUMMARY: Senate Bill 1271 requires municipalities and counties to allow payroll deductions for membership dues of certain firefighter and emergency medical services personnel organizations and law enforcement organizations.

The proposed committee substitute also requires municipalities and counties to allow payroll deductions for membership dues of an employee organization or association that has at least 2,000 members statewide, at least 500 of which are law enforcement officers.

[As introduced, this bill was identical to H1615, as introduced by Reps. Mobley, Luebke, which is currently in House State Personnel.]

BILL ANALYSIS:

The pcs adds the similar language to the chapters governing counties and cities to require those entities to allow payroll deductions for:

1. Membership dues of any firefighter and emergency medical services personnel organization that represents a majority of eligible employees in the employer's department.
2. Membership dues of any law enforcement organization or association that has at lease 2,000 members Statewide.
3. Membership dues of an employee organization or association that has at least 2,000 members statewide, 500 of which are law enforcement officers.

The authorization for the deduction must be in a signed writing and remains in effect until revoked.

EFFECTIVE DATE: Effective when it becomes law.

S1271e3-SMST-CSST-60

SENATE BILL 1271: Firefighter/EMS Payroll Deductions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 18, 2007
Introduced by:	Sen. Snow	**Summary by:**	R. Erika Churchill
Version:	PCS to Third Edition S1271-CSST-60		Committee Counsel

SUMMARY: Senate Bill 1271 requires municipalities and counties to allow payroll deductions for membership dues of certain firefighter and emergency medical services personnel organizations and law enforcement organizations.

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[As introduced, this bill was identical to H1615, as introduced by Reps. Mobley, Luebke, which is currently in House State Personnel.]

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1. Membership dues of any firefighter and emergency medical services personnel organization that represents a majority of eligible employees in the employer's department.
2. Membership dues of any law enforcement organization or association that has at lease 2,000 members Statewide.
3. Membership dues of an employee organization or association that has at least 2,000 members statewide, 500 of which are law enforcement officers.

The authorization for the deduction must be in a signed writing and remains in effect until revoked.

EFFECTIVE DATE: Effective when it becomes law.

S1271e3-SMST-CSST-60

5/24/07
Attachment 4

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-22-07

S. B. No. 1271 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Rand
Sen.)

1 moves to amend the bill on page 2, lines 15 - 17

2 ( ) WHICH CHANGES THE TITLE

3 ~~by~~ ~~deleting page 3, lines~~

4 by rewriting those lines to read:

5

6 "in a signed writing and shall remain in

7 effect until revoked.";

8

9 and on page 3, lines 12-14 by rewriting

10 those lines to read:

11 provided in a signed writing and shall

12 remain in effect until revoked.".

13

14

15

16

17

18

19

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 8

Short Title:	Expand Safe Zones/Schools, Parks, Child Ctrs.	(Public)
Sponsors:	Senators Boseman; Cowell, Jenkins, Kinnaird, and Snow.	
Referred to:	Judiciary l (Civil).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE "SAFE ZONES" NEAR CHILD CARE CENTERS AND SCHOOL GROUNDS REGARDING ILLEGAL DRUG SALES FROM THREE HUNDRED FEET TO ONE THOUSAND FEET, TO EXPAND THE "SAFE ZONE" FOR PUBLIC PARKS TO INCLUDE ALL PUBLIC PARKS, NOT JUST THOSE WITH PLAYGROUNDS AND TO INCREASE THE DISTANCE OF THOSE SAFE ZONES TO ONE THOUSAND FEET, TO INCREASE THE PENALTIES FOR CARRYING A DEADLY WEAPON ON EDUCATIONAL PROPERTY, AND TO MAKE IT A CRIMINAL OFFENSE TO POSSESS OR CARRY A GUN, RIFLE, OR PISTOL IN A PUBLIC PARK, IN ANY CHILD CARE CENTER, OR ON ANY PLAYGROUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(e) reads as rewritten:

"(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the

current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for a child care center, or for an elementary or secondary school or within ~~300~~1,000 feet of the boundary of real property used for a child care center, or for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). For purposes of this subdivision, a child care center is as defined in G.S. 110-86(3)a., and that is licensed by the Secretary of the Department of Health and Human Services.

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(10) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property that is a ~~playground in a~~ public park or within ~~300~~1,000 feet of the boundary of real property that is a ~~playground in a~~ public park shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). ~~For purposes of this subdivision the term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation open to the public, and with any portion thereof containing three or more separate apparatuses~~

~~intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.~~"

SECTION 2. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a ~~Class I~~ Class H felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(b1) It shall be a ~~Class G~~Class F felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property or to a curricular or extracurricular activity sponsored by a school. This subsection shall not apply to fireworks.

(c) It shall be a ~~Class I~~Class H felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a ~~Class G~~ Class F felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1 on educational property. This subsection shall not apply to fireworks.

(d) It shall be a ~~Class 1~~ Class A1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any

sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a ~~Class 1~~Class A1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this section it shall be a ~~Class 1~~Class A1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property or to a curricular or extracurricular activity sponsored by a school if:

(1) The person is not a student attending school on the educational property or an employee employed by the school working on the educational property; and

(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and

(2) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(3) The firearm is not loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

(4) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(1a) A person exempted by the provisions of G.S. 14-269(b);

(2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties;

(3) Home schools as defined in G.S. 115C-563(a); or

(4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.

(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 3. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-269.5. Possessing or carrying firearms in public parks, in child care centers, or on playgrounds.**

(a) Definitions. – The following definitions apply in this section:

(1) Child care center. – A child care center as defined in G.S. 110-86(3)a., and that is licensed by the Secretary of the Department of Health and Human Services.

(2) Playground. – Any outdoor facility (including any parking lot appurtenant thereto) intended for recreation open to the public, and with any portion thereof containing three or more separate apparatuses intended for the recreation of children including, but not limited to, sliding boards, swing sets, and teeterboards.

(b) Offense. – It is unlawful for any person to possess or carry, whether openly or concealed, any gun, rifle, or pistol in any public park, in any child care center, or on any playground.

(c) Exemptions. – This section shall not apply to the following:

(1) A person exempted by the provisions of G.S. 14-269(b).

(2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police or security guard employed by the owner, lessee, or manager of the playground or child care facility, when acting in the discharge of their official duties.

(d) Penalty. – Any person violating this section is guilty of a Class 1 misdemeanor."

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 8
PROPOSED COMMITTEE SUBSTITUTE S8-CSRK-37 [v.3]

5/21/2007 3:49:43 PM

Short Title: Expand Safe Zones/Schools, Parks, Child Ctrs. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE "SAFE ZONES" NEAR CHILD CARE CENTERS AND SCHOOL GROUNDS REGARDING ILLEGAL DRUG SALES FROM THREE HUNDRED FEET TO ONE THOUSAND FEET, AND TO EXPAND THE "SAFE ZONE" FOR PUBLIC PARKS TO INCLUDE ALL PUBLIC PARKS, NOT JUST THOSE WITH PLAYGROUNDS AND TO INCREASE THE DISTANCE OF THOSE SAFE ZONES TO ONE THOUSAND FEET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(e) reads as rewritten:

"(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

. . .

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for a child care center, or for an elementary or secondary school or within ~~300~~1,000 feet of the boundary of real property used for a child care center, or for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). For purposes of this subdivision, a child care center is as defined in G.S. 110-86(3)a., and that is licensed by the Secretary of the Department of Health and Human Services.

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(10) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property that is a ~~playground in a~~ public park or

within ~~300~~1,000 feet of the boundary of real property that is a ~~playground in a~~ public park shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). ~~For purposes of this subdivision the term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation open to the public, and with any portion thereof containing three or more separate apparatuses intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.~~"

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 8:
Expand Safe Zones/Schools, Parks, Child Ctrs

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 21, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: This bill would increase the boundary limit, from 300 ft. to 1,000 ft., around specified locations where the penalty for drug sales would be classified as a Class E felony. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

CURRENT LAW: General Statute 90-95(a)(1) makes it unlawful to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance.

- A person 18 years of age or over, that sells a controlled substance to a person who is 13 years of age or younger, is guilty of a Class C felony.
- A person 18 years of age or over, that sells a controlled substance to a person who is between 13 years of age and 16 years of age, is guilty of a Class D felony.

It is a federal offense to distribute, possess with the intent to distribute or manufacture a controlled substance in or on, or within 1000 feet of the real property that comprises a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority.

BILL ANALYSIS: This act would:

- For persons 21 years of age or older, increase the distance from 300 feet to 1,000 feet around a child care center, elementary school, or secondary school, where a violation of G.S. 90-95(a)(1) is classified as a Class E felony. The current law excepting the transfer of less than five grams of marijuana, without compensation, is retained.
- For persons 21 years of age or older, increase the distance from 300 feet to 1,000 feet around the boundary of a public park [currently a playground in a public park], where a violation of G.S. 90-95(a)(1) is classified as a Class E felony. The amendment deletes the provision that required the offense to be either on, or within the specified distance, from a playground in a public park. The current law excepting the transfer of less than five grams of marijuana, without compensation, is retained.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 17*

Short Title:	Up Penalties/Sex Offenses With Child Victim.	(Public)
Sponsors:	Senators Boseman; Allran, Atwater, Foriest, Garrou, Goodall, Goss, Jones, Kerr, Queen, Rand, and Snow.	
Referred to:	Judiciary 1 (Civil).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN CHILD PORNOGRAPHY LAWS BY AMENDING THE DEFINITION OF SEXUAL ACTIVITY AND EXPANDING THE SCOPE OF CERTAIN PORNOGRAPHY LAWS, INCREASING THE PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR, INCREASING THE PENALTY FOR SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT, AND INCREASING THE PENALTY FOR A SECOND OR SUBSEQUENT OFFENSE OF TAKING INDECENT LIBERTIES WITH CHILDREN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13(5) reads as rewritten:

"(5) Sexual Activity. – Any of the following acts:

a. Masturbation, whether done alone or with another human or an animal.

b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.

c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.

d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or

vagina, except when done as part of a recognized medical procedure.

g. The lascivious exhibition of the genitals or pubic area of any person."

SECTION 2. G.S. 14-190.15 reads as rewritten:

"**§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful performances to minors.**

(a) Disseminating Harmful Material. – A ~~person~~ defendant commits the offense of disseminating harmful material to minors if, with or without consideration and knowing the character or content of the material, ~~he~~the defendant:

(1) Sells, furnishes, presents, or distributes to a ~~minor~~ minor, or a person the defendant believes to be a minor, material that is harmful to minors; or

(2) Allows a ~~minor~~ minor, or a person the defendant believes to be a minor, to review or peruse material that is harmful to minors.

(b) Exhibiting Harmful Performance. – A ~~person~~ defendant commits the offense of exhibiting a harmful performance to a minor if, with or without consideration and knowing the character or content of the performance, ~~he~~ the defendant allows a ~~minor~~ minor, or a person the defendant believes to be a minor, to view a live performance that is harmful to minors.

(c) Defenses. – Except as provided in subdivision (3), a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

(1) The defendant was a parent or legal guardian of the minor.

(2) The defendant was a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.

(3) Before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.

(4) The dissemination was made with the prior consent of a parent or guardian of the recipient.

(d) Punishment. – Violation of this section is a Class 1 misdemeanor."

SECTION 3. G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 4. G.S. 14-190.17(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class D felony."

SECTION 5. G.S. 14-190.17A(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class E felony."

SECTION 6. G.S. 14-202.3(c) reads as rewritten:

"(c) Punishment. – A violation of this section is a ~~Class H felony.~~Class E felony."

SECTION 7. G.S. 14-202.1 reads as rewritten:

"**§ 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.~~follows:

(1) For a first offense under this section, the person is guilty of a Class F felony.

(2) For a second or subsequent offense under this section, the person is guilty of a Class E felony.

(c) In all cases where a person is charged under this section with a second or subsequent offense, the record of a prior conviction under this section shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of taking indecent liberties with children in violation of this section. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein."

SECTION 8. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 17*
PROPOSED COMMITTEE SUBSTITUTE S17-CSSA-30 [v.2]

5/21/2007 4:30:54 PM

Short Title: Sex Offenders/Pretrial Release. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRETRIAL RELEASE REQUIREMENTS FOR SEX OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534.4 reads as rewritten:

"§ 15A-534.4. Sex offenses and crimes of violence against child victims: bail and pretrial release.

(a) In all cases in which the defendant is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S. 14-202.1, with rape or any other sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of G.S. 14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. 14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim, in addition to the provisions of G.S. 15A-534 a judicial official ~~may~~ shall impose the following conditions on pretrial ~~release;~~release:

(1) That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.

(2) That the defendant refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges.

(3) That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

The conditions set forth above ~~may~~ shall be imposed in addition to any other conditions that the judicial official may impose on pretrial release.

(b) Notwithstanding the provisions of subsection (a), upon request of the defendant, the judicial official may waive one or more of the conditions required by subsection (a)

if the judicial official makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed on the defendant."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 17:
Sex Offenders/Pretrial Release.

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 21, 2007
Introduced by:	Sen. Boseman	**Summary by:**	Hal Pell
Version:	PCS to First Edition S17-CSRK		Committee Co-Counsel

SUMMARY: ***This bill would amend the pretrial release statute that is applicable to sex offenses by making the conditional terms mandatory, unless the court makes specific findings. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.***

CURRENT LAW: The statute applicable to the pretrial release of persons accused of sex offenses allows the court to impose the listed terms of pretrial release.

BILL ANALYSIS: The act would amend the statute to make the imposition of the terms mandatory, unless the defendant requests a waiver. If the court waives a condition, then it must support its decision by making written findings of fact that the imposition of the condition is not in the best interests of the alleged victim.

EFFECTIVE DATE: The act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1130

Short Title:	Broaden Open Discovery.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT CLARIFYING THAT DEFENDANTS MUST HAVE ACCESS TO THE COMPLETE FILES OF ALL LAW ENFORCEMENT AND PROSECUTORIAL AGENCIES IN THE OPEN DISCOVERY PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903(a)(1) reads as rewritten:

"(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the prosecution of the defendant. Oral statements shall be in written or recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein."

SECTION 2. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1130
PROPOSED COMMITTEE SUBSTITUTE S1130-CSST-59 [v.6]

5/22/2007 4:53:12 PM

Short Title: Open Discovery/Grand Jury Transcripts. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT CLARIFYING THAT DEFENDANTS MUST HAVE ACCESS TO THE COMPLETE FILES OF ALL LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903(a)(1) reads as rewritten:

"(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant. Oral statements shall be in written or recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein."

SECTION 2. This act becomes effective October 1, 2007.

SENATE BILL 1130: Broaden Open Discovery

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 22, 2007
Introduced by:	Sen. Clodfelter	**Summary by:**	R. Erika Churchill Committee Counsel Denise Huntley Committee Staff
Version:	First Edition		

SUMMARY: ***The proposed committee substitute for Senate Bill 1130 would clarify the meaning of the term "prosecutorial agency" as it relates to discovery in superior court criminal trials.***

CURRENT LAW: Under current law, the State must disclose:

- The complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" is defined to include: defendant's statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses. The defendant would have the right to inspect, examine, and test any physical evidence or sample.
- Within a reasonable time before trial, the State must give notice of any expert witnesses that it reasonably expects to call at trial. Reports of the results of examinations or tests would be furnished, as well as an expert's curriculum vitae, opinion, and the underlying basis for the opinion.
- Provide the defendant, at the beginning of jury selection, a list of witnesses whom the State reasonably expects to call at trial. The State may certify, in writing, that the disclosure of a witness's name may subject the witness or others to physical or substantial economic harm or coercion, or that there is another compelling reason not to disclose the name. The court retains discretion to allow any undisclosed witness to testify at trial. G.S. 15A-903.

BILL ANALYSIS: The PCS would define the term "prosecutorial agency" for purposes of who must make available files to include any public or private entity that obtains information on behalf of law enforcement or prosecutors. The prosecutorial agency would include "any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant."

EFFECTIVE DATE: October 1, 2007.

S1130e1-SMTB

Attachment 14

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1081

Short Title:	Expunge Nonviolent Crimes. (Public)
Sponsors:	Senators Weinstein, Kinnaird; Albertson, Allran, Atwater, Berger of Franklin, Bingham, Brunstetter, Clodfelter, Cowell, Dannelly, Dorsett, Foriest, Graham, Hagan, Hartsell, Jenkins, Jones, Malone, Purcell, Shaw, Snow, and Stevens.
Referred to:	Judiciary I (Civil).

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT AGENCIES AND FEDERALLY INSURED DEPOSITORY INSTITUTIONS FOR EMPLOYMENT PURPOSES ONLY AND TO REQUIRE THOSE AGENCIES AND INSTITUTIONS TO MAINTAIN THE CONFIDENTIALITY OF THE EXPUNGED INFORMATION, TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, TO INCREASE THE FEES FOR EXPUNCTIONS, AND TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-150. Expunction of records for conviction of certain nonviolent criminal offenses if there are no subsequent criminal convictions for at least 10 years.**

(a) For purposes of this section, the term 'nonviolent criminal offense' means a misdemeanor, Class H felony, or Class I felony; however, the term does not include any of the following:

(1) An offense that includes assault as an essential element of the offense.

(2) An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes.

(3) An offense that includes the possession or use of a firearm as an essential element of the offense or is used as an aggravating factor in sentencing.

(4) An offense that is trafficking under G.S. 90-95(h).

(5) An offense that involves impaired driving.

(b) Whenever a person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state, has no outstanding warrants or pending criminal cases, and has not previously obtained an expunction under this section pleads guilty to or is guilty of a nonviolent criminal offense, the person may file a petition in the court where he or she was convicted for expunction of the nonviolent criminal offense from the person's criminal record. The petition cannot be filed earlier than 10 years after the date of the conviction, period of active sentence, period of post-release supervision, or period of probation has been completed, whichever occurs

later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has been of good behavior for the 10-year period since the date of conviction of the nonviolent criminal offense in question, has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, has no outstanding warrants or pending criminal cases, and has not previously obtained an expunction under this section.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the person's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court where the case was tried resulting in conviction. The district attorney shall have 10 days to file any objection to the petition and shall be notified as to the date of the hearing of the petition.

The judge to whom the petition is presented may call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the 10-year period that the judge deems desirable.

(c) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for 10 years from the date of conviction of the nonviolent criminal offense in question, the petitioner has not previously obtained an expunction under this section, the petitioner has no outstanding warrants or pending criminal cases, and the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, then the court shall order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest, indictment, conviction, or information for the nonviolent criminal offense. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, indictment, conviction, information, trial, or response to any inquiry made of the person for any purpose.

(d) The court shall also order that the conviction for the nonviolent criminal offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Expunction of records under this section may occur only once with respect to any person.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his or her county, file with the Administrative Office of the Courts the names of those persons granted expunctions under the provisions of this section and the offenses for which the expunctions were granted, and the Administrative Office of the Courts shall maintain a confidential file containing the names of

persons granted expunctions and the offenses for which the expunctions were granted. The information contained in the file shall be disclosed only as follows:

(1) To judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expunction.

(2) To State and local law enforcement agencies for employment purposes only.

(3) To federally insured depository institutions for employment purposes only.

(f) A person who knowingly and willfully discloses or uses in an unauthorized manner information obtained under subsection (e) of this section, except as otherwise permitted by that subsection, is guilty of a Class 3 misdemeanor.

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of two hundred dollars ($200.00) at the time the petition is filed. One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has not previously obtained an expunction under this section and has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has not previously obtained an expunction under this section and that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.~~

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of

Justice and to the Administrative Office of the Courts which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner ~~had~~ has not previously obtained an expunction under this section, the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the conviction in question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~one hundred twenty-five dollars ($125.00)~~two hundred dollars ($200.00) at the time the petition is filed. ~~Fees collected under this subsection shall be deposited in the General Fund.~~One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 3. G.S. 90-96(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of

probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.~~

(3) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation."

SECTION 4. G.S. 90-96(f) reads as rewritten:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~sixty-five dollars ($65.00)~~ two hundred dollars ($200.00) at the time the petition is filed. ~~Fees collected under this subsection shall be deposited in the General Fund.~~ One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 5. G.S. 90-113.14(b) reads as rewritten:

Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or

information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

(3) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation."

SECTION 6. G.S. 90-113.14 is amended by adding a new subsection to read:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of two hundred dollars ($200.00) at the time the petition is filed. One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 7. This act becomes effective December 1, 2007, and applies to applications for expunction of records made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1081
PROPOSED COMMITTEE SUBSTITUTE S1081-CSSTf-54 [v.4]

5/21/2007 9:46:00 PM

Short Title: Expunge Nonviolent Crimes. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT AGENCIES AND FEDERALLY INSURED DEPOSITORY INSTITUTIONS FOR EMPLOYMENT AND LICENSING PURPOSES ONLY AND TO REQUIRE THOSE AGENCIES AND INSTITUTIONS TO MAINTAIN THE CONFIDENTIALITY OF THE EXPUNGED INFORMATION, TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, TO INCREASE THE FEES FOR EXPUNCTIONS, AND TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-150. Expunction of records for conviction of certain nonviolent criminal offenses if there are no subsequent criminal convictions for at least 10 years.**

(a) For purposes of this section, the term 'nonviolent criminal offense' means a misdemeanor, Class H felony, or Class I felony; however, the term does not include any of the following:

(1) An offense that includes assault as an essential element of the offense.

(2) An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes.

(3) An offense that includes the possession or use of a firearm as an essential element of the offense or is used as an aggravating factor in sentencing.

(4) An offense that is trafficking under G.S. 90-95(h).

(5) An offense that involves impaired driving.

(b) Whenever a person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state, has no outstanding warrants or pending criminal cases, and has not previously obtained an expunction for a criminal conviction pleads guilty to or is guilty of a nonviolent criminal offense, the person may file a petition in the court where he or she was convicted for expunction of the nonviolent criminal offense from the person's criminal record. The petition cannot be filed earlier than 10 years after the date of the conviction, period of active sentence, period of post-release supervision, or period of probation has been completed, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has been of good behavior for the 10-year period since the date of conviction of the nonviolent criminal offense in question, has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, has no outstanding warrants or pending criminal cases, and has not previously obtained an expunction for a criminal conviction.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the petitioner; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court where the case was tried resulting in conviction. The district attorney shall have 10 days to file any objection to the petition and shall be notified as to the date of the hearing of the petition.

The judge to whom the petition is presented may call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the 10-year period that the judge deems desirable.

(c) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for 10 years from the date of conviction of the nonviolent criminal offense in question, the petitioner has not previously obtained an expunction for a criminal conviction, the petitioner has no outstanding warrants or pending criminal cases, and the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, then the court shall order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest, indictment, conviction, or information for the nonviolent criminal offense. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, indictment, conviction, information, trial, or response to any inquiry made of the person for any purpose.

(d) The court shall also order that the conviction for the nonviolent criminal offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Expunction of records may occur only once with respect to any person.

(e) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his or her county, file with the Administrative Office of the Courts the names of those persons granted expunctions under the provisions of this section and the offenses for which the expunctions were granted, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted expunctions and the offenses for which the expunctions were granted. The information contained in the file shall be disclosed only as follows:

(1) To judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expunction.

(2) To State and local law enforcement agencies for employment purposes only.

(3) To federally insured depository institutions for employment purposes only.

(4) To the North Carolina State Bar and Board of Law Examiners for licensing purposes only.

(5) To the North Carolina State Board of Certified Public Accountant Examiners for licensing purposes only.

(f) A person who knowingly and willfully discloses or uses in an unauthorized manner information obtained under subsection (e) of this section, except as otherwise permitted by that subsection, is guilty of a Class 3 misdemeanor.

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of two hundred dollars ($200.00) at the time the petition is filed. One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has not previously obtained an expunction for a criminal conviction and has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), ~~he~~ the person may file a petition in the court where he or she was convicted for expunction of the misdemeanor from ~~his~~ the person's criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has not previously obtained an expunction for a criminal conviction and that he or she has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which ~~he~~ the petitioner lives and that ~~his~~ the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this~~

~~State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.~~

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the petitioner, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against ~~him~~ the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that ~~he~~ the judge deems desirable.

(b) If the court, after hearing, finds that the petitioner ~~had~~ has not previously obtained an expunction for a criminal conviction, the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against ~~him,~~ the petitioner, and (i) petitioner was not 18 years old at the time of the conviction in question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status ~~he~~ the petitioner occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of ~~him~~ the person for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~one hundred twenty-five dollars ($125.00)~~two hundred dollars ($200.00) at the time the petition is filed. ~~Fees collected under this subsection shall be deposited in the General Fund.~~One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 3. G.S. 90-96(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other ~~state;~~state, and has not previously obtained an expunction for a criminal conviction;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.~~

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the applicant, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. Expunction of records may occur only once with respect to any person. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation."

SECTION 4. G.S. 90-96(f) reads as rewritten:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~sixty-five dollars ($65.00)~~ two hundred dollars ($200.00) at the time the petition is filed. ~~Fees collected under this subsection shall be deposited in the General Fund.~~ One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 5. G.S. 90-113.14(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all

official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other ~~state;~~state, and has not previously obtained an expunction for a criminal conviction;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the applicant, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. Expunction of records may occur only once with respect to any person. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation."

SECTION 6. G.S. 90-113.14 is amended by adding a new subsection to read:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of two hundred dollars ($200.00) at the time the petition is filed. One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 7. This act becomes effective December 1, 2007, and applies to applications for expunction of records made on or after that date.

SENATE BILL 1081:
Expunge Nonviolent Crimes

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 15, 2007
Introduced by:	Sen. Weinstein	**Summary by:**	R. Erika Churchill and Kara McCraw, Committee Co-Counsel
Version:	PCS to First Edition S1081-CSST-54		

SUMMARY: ***Senate Bill 1081 would create a new section providing for one time expunction of nonviolent criminal offenses, and would change petition requirements and raise fees in existing expunction statutes.***

CURRENT LAW:

G.S. 15A-145 provides for expunction of records of first offenders under the age of 18 at the time of conviction for misdemeanors.

G.S. 90-96(b) provides for expunction of certain offenses related to controlled substances for first time offenders under the age of 21 placed on probation under G.S. 90-96(a), following the dismissal of the person and discharge of the proceedings.

G.S. 90-113.14(b) provides for expunction of certain offenses related to the Toxic Vapors Act for first time offenders under the age of 21 placed on probation under G.S. 90-113.14(a), following the dismissal of the person and discharge of the proceedings.

BILL ANALYSIS:

Section 1: The pcs would create a new section providing for expunction of records for conviction of certain nonviolent criminal offenses.

- **Nonviolent criminal offenses:** Nonviolent criminal offenses would include misdemeanors, Class H felonies, and Class I felonies, except all of the following:
  - Offenses with assault as an essential element.
  - Offenses requiring registration under Art. 27 of Chapter 14 (Sex Offender Registration).
  - Offenses including possession or use of a firearm as an essential element or used as an aggravating factor in sentencing.
  - Offenses for trafficking under G.S. 90-95(h).
  - Offenses involving impaired driving.
- **Qualifications to petition and contents:** The petition cannot be filed earlier than 10 years after the later of the: 1) conviction, 2) period of active sentence, 3) period of post-release supervision, or 4) period of probation. The petitioner must show all of the following:
  1. That the petitioner has no previous convictions of any felony or misdemeanor, other than a traffic violation under any state or federal law.
  2. That the petitioner has no outstanding warrants or pending criminal cases.
  3. That the petitioner has no previous expunction of a criminal conviction.
  4. Petitioner's affidavit as to good behavior.
  5. Verified affidavits of good character from 2 persons unrelated to petitioner.
  6. Statement that petition is motion in cause in case of conviction.

7. Application on Administrative Office of the Courts (AOC) form authorizing criminal records checks, search for outstanding warrants and pending cases, and search of confidential records of expunctions.
8. Petitioner's affidavit that no restitution orders or civil judgments for restitution are outstanding.
9. A fee of $200. $100 of the fee is to be remitted to the Department of Justice to pay the costs of the SBI purging records, and $100 of the fee is to be remitted to the AOC to pay costs associated with implementing this section. Fees would not be required for indigent filings.

The district attorney is to be served with petition, has 10 days to file objections to the petition and is to be notified of the hearing date. The judge may call on a probation officer for additional investigation of the petitioner's conduct.

- **Grant of Expunction:** If the court, after a hearing, finds that the petitioner has had good behavior, no convictions, no previous expunctions, no outstanding warrants or criminal cases, and no outstanding restitution, then the court must order the petitioner be restored to the status occupied prior to the nonviolent criminal offense. The petitioner will not be held to have committed perjury or have given a false statement for failing to acknowledge the nonviolent criminal offense thereafter.

The court must order the conviction expunged from court and law enforcement records, including transmittal of the order to the State and Federal Bureaus of Investigation.

- **AOC Confidential File of Expunctions:** The clerk of superior court must file with AOC at the end of each term of court the names of person granted expunctions and the offenses granted for, and AOC must maintain a confidential file of this information, which must be disclosed only for the following purposes:
  - To judges to ascertain if a person has previously been granted an expunction.
  - To State and local law enforcement for employment purposes only.
  - To federally insured depository institutions for employment purposes only.
  - To the North Carolina State Bar and Board of Law Examiners for licensing purposes only.
  - To the North Carolina State Board of Certified Public Accountants Examiners for licensing purposes only.

Knowing and willful disclosure or use of the information in an unauthorized manner would be a Class 3 misdemeanor.

Section 2: The pcs would G.S. 15A-145, expunction for first offenders under the age of 18, as follows:

- Require that expunctions under G.S. 15A-145 be granted only when the person had not previously obtained an expunction.
- Eliminate the current petition requirement that affidavits from the clerk of superior court, chief of police, or sheriff of the county in which the petitioner was convicted be submitted showing that the petitioner had not been convicted of a felony or misdemeanor other than a traffic violation at any time prior to the misdemeanor conviction or during the 2 years following, and instead require an application on the Administrative Office of the Courts (AOC) form authorizing criminal records checks, search for outstanding warrants and pending cases, and search of confidential record of expunctions.
- Increase the filing fee from $125 to $200, with $100 of the fee to be remitted to the Department of Justice to pay the costs of the SBI purging records, and $100 of the fee to be

remitted to the AOC to pay costs associated with implementing this section. Current law provides that fees are not required for indigent filing.

Sections 3 and 4: The pcs would amend G.S. 90-96(b), expunction for certain offenses related to controlled substances for first offenders under age 21, as follows:

- Require that expunctions under G.S. 90-96(b) be granted only when the person had not previously obtained an expunction.
- Eliminate the current petition requirement that affidavits from the clerk of superior court, chief of police, or sheriff of the county in which the petitioner was convicted be submitted showing that the petitioner had not been convicted of a felony or misdemeanor other than a traffic violation at any time prior to the misdemeanor conviction or during the 2 years following, and instead require an application on the Administrative Office of the Courts (AOC) form authorizing criminal records checks, search for outstanding warrants and pending cases, and search of confidential records of expunctions.
- Increase the filing fee from $65 to $200, with $100 of the fee to be remitted to the Department of Justice to pay the costs of the SBI purging records, and $100 of the fee to be remitted to the AOC to pay costs associated with implementing this section. Current law provides that fees are not required for indigent filings.

Sections 5 & 6: The pcs would change G.S. 90-113.14(b), expunction of certain offenses related to the Toxic Vapors Act for first time offenders under the age of 21, as follows:

- Require that expunctions under G.S. 90-113.14(b) be granted only when the person had not previously obtained an expunction.
- Eliminate the current petition requirement that affidavits from the clerk of superior court, chief of police, or sheriff of the county in which the petitioner was convicted be submitted showing that the petitioner had not been convicted of a felony or misdemeanor other than a traffic violation at any time prior to the misdemeanor conviction or during the 2 years following, and instead require an application on the AOC form authorizing criminal records checks, search for outstanding warrants and pending cases, and search of confidential records of expunctions.
- Require a filing fee of $200 for expunction petitions, with $100 of the fee to be remitted to the Department of Justice to pay the costs of the SBI purging records, and $100 of the fee to be remitted to the AOC to pay costs associated with implementing this section. Fees would not be required for indigent filings.

EFFECTIVE DATE: This bill would become effective December 1, 2007 and apply to applications for expunctions of records made on or after that date.

S1081e1-SMTC-CSTC

SENATE BILL 1081: Expunge Nonviolent Crimes

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 15, 2007
Introduced by:	Sen. Weinstein	**Summary by:**	R. Erika Churchill and Kara McCraw, Committee Co-Counsel
Version:	PCS to First Edition S1081-CSST-54		

SUMMARY: Senate Bill 1081 would create a new section providing for one time expunction of nonviolent criminal offenses, and would change petition requirements and raise fees in existing expunction statutes.

CURRENT LAW:

G.S. 15A-145 provides for expunction of records of first offenders under the age of 18 at the time of conviction for misdemeanors.

G.S. 90-96(b) provides for expunction of certain offenses related to controlled substances for first time offenders under the age of 21 placed on probation under G.S. 90-96(a), following the dismissal of the person and discharge of the proceedings.

G.S. 90-113.14(b) provides for expunction of certain offenses related to the Toxic Vapors Act for first time offenders under the age of 21 placed on probation under G.S. 90-113.14(a), following the dismissal of the person and discharge of the proceedings.

BILL ANALYSIS:

Section 1: The pcs would create a new section providing for expunction of records for conviction of certain nonviolent criminal offenses.

- **Nonviolent criminal offenses:** Nonviolent criminal offenses would include misdemeanors, Class H felonies, and Class I felonies, except all of the following:
  - Offenses with assault as an essential element.
  - Offenses requiring registration under Art. 27 of Chapter 14 (Sex Offender Registration).
  - Offenses including possession or use of a firearm as an essential element or used as an aggravating factor in sentencing.
  - Offenses for trafficking under G.S. 90-95(h).
  - Offenses involving impaired driving.
- **Qualifications to petition and contents:** The petition cannot be filed earlier than 10 years after the later of the: 1) conviction, 2) period of active sentence, 3) period of post-release supervision, or 4) period of probation. The petitioner must show all of the following:
  1. That the petitioner has no previous convictions of any felony or misdemeanor, other than a traffic violation under any state or federal law.
  2. That the petitioner has no outstanding warrants or pending criminal cases.
  3. That the petitioner has no previous expunction of a criminal conviction.
  4. Petitioner's affidavit as to good behavior.
  5. Verified affidavits of good character from 2 persons unrelated to petitioner.
  6. Statement that petition is motion in cause in case of conviction.

7. Application on Administrative Office of the Courts (AOC) form authorizing criminal records checks, search for outstanding warrants and pending cases, and search of confidential records of expunctions.
8. Petitioner's affidavit that no restitution orders or civil judgments for restitution are outstanding.
9. A fee of $200. $100 of the fee is to be remitted to the Department of Justice to pay the costs of the SBI purging records, and $100 of the fee is to be remitted to the AOC to pay costs associated with implementing this section. Fees would not be required for indigent filings.

The district attorney is to be served with petition, has 10 days to file objections to the petition and is to be notified of the hearing date. The judge may call on a probation officer for additional investigation of the petitioner's conduct.

- **Grant of Expunction:** If the court, after a hearing, finds that the petitioner has had good behavior, no convictions, no previous expunctions, no outstanding warrants or criminal cases, and no outstanding restitution, then the court must order the petitioner be restored to the status occupied prior to the nonviolent criminal offense. The petitioner will not be held to have committed perjury or have given a false statement for failing to acknowledge the nonviolent criminal offense thereafter.

The court must order the conviction expunged from court and law enforcement records, including transmittal of the order to the State and Federal Bureaus of Investigation.

- **AOC Confidential File of Expunctions:** The clerk of superior court must file with AOC at the end of each term of court the names of person granted expunctions and the offenses granted for, and AOC must maintain a confidential file of this information, which must be disclosed only for the following purposes:
  - To judges to ascertain if a person has previously been granted an expunction.
  - To State and local law enforcement for employment purposes only.
  - To federally insured depository institutions for employment purposes only.
  - To the North Carolina State Bar and Board of Law Examiners for licensing purposes only.
  - To the North Carolina State Board of Certified Public Accountants Examiners for licensing purposes only.

Knowing and willful disclosure or use of the information in an unauthorized manner would be a Class 3 misdemeanor.

Section 2: The pcs would G.S. 15A-145, expunction for first offenders under the age of 18, as follows:

- Require that expunctions under G.S. 15A-145 be granted only when the person had not previously obtained an expunction.
- Eliminate the current petition requirement that affidavits from the clerk of superior court, chief of police, or sheriff of the county in which the petitioner was convicted be submitted showing that the petitioner had not been convicted of a felony or misdemeanor other than a traffic violation at any time prior to the misdemeanor conviction or during the 2 years following, and instead require an application on the Administrative Office of the Courts (AOC) form authorizing criminal records checks, search for outstanding warrants and pending cases, and search of confidential record of expunctions.
- Increase the filing fee from $125 to $200, with $100 of the fee to be remitted to the Department of Justice to pay the costs of the SBI purging records, and $100 of the fee to be

remitted to the AOC to pay costs associated with implementing this section. Current law provides that fees are not required for indigent filing.

Sections 3 and 4: The pcs would amend G.S. 90-96(b), expunction for certain offenses related to controlled substances for first offenders under age 21, as follows:

- Require that expunctions under G.S. 90-96(b) be granted only when the person had not previously obtained an expunction.
- Eliminate the current petition requirement that affidavits from the clerk of superior court, chief of police, or sheriff of the county in which the petitioner was convicted be submitted showing that the petitioner had not been convicted of a felony or misdemeanor other than a traffic violation at any time prior to the misdemeanor conviction or during the 2 years following, and instead require an application on the Administrative Office of the Courts (AOC) form authorizing criminal records checks, search for outstanding warrants and pending cases, and search of confidential records of expunctions.
- Increase the filing fee from $65 to $200, with $100 of the fee to be remitted to the Department of Justice to pay the costs of the SBI purging records, and $100 of the fee to be remitted to the AOC to pay costs associated with implementing this section. Current law provides that fees are not required for indigent filings.

Sections 5 & 6: The pcs would change G.S. 90-113.14(b), expunction of certain offenses related to the Toxic Vapors Act for first time offenders under the age of 21, as follows:

- Require that expunctions under G.S. 90-113.14(b) be granted only when the person had not previously obtained an expunction.
- Eliminate the current petition requirement that affidavits from the clerk of superior court, chief of police, or sheriff of the county in which the petitioner was convicted be submitted showing that the petitioner had not been convicted of a felony or misdemeanor other than a traffic violation at any time prior to the misdemeanor conviction or during the 2 years following, and instead require an application on the AOC form authorizing criminal records checks, search for outstanding warrants and pending cases, and search of confidential records of expunctions.
- Require a filing fee of $200 for expunction petitions, with $100 of the fee to be remitted to the Department of Justice to pay the costs of the SBI purging records, and $100 of the fee to be remitted to the AOC to pay costs associated with implementing this section. Fees would not be required for indigent filings.

EFFECTIVE DATE: This bill would become effective December 1, 2007 and apply to applications for expunctions of records made on or after that date.

S1081e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 212

Short Title:	Land-Use Permit Appeals.	(Public)
Sponsors:	Senators Kinnaird; and Clodfelter.	
Referred to:	Judiciary I	

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals to superior court by proceedings in the nature of certiorari authorized under the provisions of this Article.

(b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall state the facts that demonstrate that the petitioner has standing to seek review and shall set forth the grounds upon which the petitioner contends that an error was made as well as the relief the petitioner seeks. The facts in support of allegations that the votes of one or more members of the decision-making body were affected by impermissible bias or conflict of interest shall be set forth with particularity.

(c) Standing. – A petition may be filed under this section only by a person who has standing to challenge the decision being appealed. A person has standing if a reasonable person in the position of the person seeking to challenge the decision could reasonably conclude that the use of the property authorized by the decision would be likely to adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public. Without limiting the generality of the foregoing, the following principles shall apply in determining whether a petitioner has standing:

(1) If the decision being appealed involves a denial of a permit request, a denial of a variance, or a determination that property is being used in violation of an ordinance adopted under this Article, then any person

with an ownership or leasehold interest in the property in question, as well as the applicant for the permit or the variance (if different than the owner), has standing to file a petition.

(2) If the decision being appealed involves the issuance of a permit, the granting of a variance, or a determination that property is being used in conformity with an ordinance adopted under this Article, then the following persons shall have standing to file a petition, so long as they satisfy the general criteria set forth at the beginning of this subsection:

a. Any person who resides or owns property in such close proximity to the property that is the subject of the decision that the use of the property authorized by the decision would adversely affect that person's use or enjoyment of his or her residence or property or would adversely affect the value of that property.

b. Any person whose economic interests are directly threatened by the use authorized by the decision.

c. A property owners', neighborhood, or similar civic association if any of its members would have standing to challenge the decision as an individual, the interests sought to be protected are germane to the association's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members who would have standing.

For purposes of this subsection, the term "person" refers to any legal entity authorized to bring suit in his, her, or its own name, and the term "owner" refers to any person having an ownership interest in property.

(d) Respondent. – The respondent named in the petition shall be the city whose council, board of adjustment, planning board, or other body made the decision that is being appealed. If the petitioner is not the applicant before the council, board of adjustment, or planning board whose decision is being appealed, the petitioner shall name that applicant as a respondent. Any petitioner may, but need not, also name as a respondent any person who participated in the hearing before the council, board of adjustment, or planning board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(f) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to

bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section, except that:

(1) If the petitioner is not the applicant before the council, board of adjustment, or planning board whose decision is being appealed and the petitioner fails to name the applicant as a respondent, then the applicant may intervene as a matter of right.

(2) Except as otherwise stated in subdivision (1) of this subsection, an intervenor must demonstrate that a reasonable person in the position of the intervenor could reasonably believe that the outcome of the appeal could adversely affect the interests of that person in some real, substantial, and concrete way that is demonstrably different in nature or degree than the manner in which the decision affects members of the general public.

(h) The Record. – The record shall consist of all documents and exhibits submitted to the council, planning board, or board of adjustment whose decision is challenged, together with the minutes of the meeting or meetings at which the matter appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the matter appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section, except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if and to the extent that the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of bias or conflict of interest, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

(1) When reviewing the decision of a city council, board of adjustment, or planning board under the provisions of this section, the trial court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including, but not limited to, those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the municipality or the authority conferred upon the decision-making body by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making body below erred in the interpretation of an ordinance, the trial court may review that issue de novo, provided that the court shall give due consideration to the construction adopted by those entities charged with execution and administration of the ordinance where that construction has been thoroughly considered and consistently applied by those entities.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making body on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that were reasonable for the decision-making body to rely upon it. Notwithstanding the foregoing, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses (i.e., persons not qualified by reason of specialized knowledge, skill, experience, training, or education to testify as an expert) as to matters about which only expert testimony would generally be admissible under the rules of evidence. By way of illustration without limitation, the term "competent evidence" shall not be deemed to include the opinion of lay witnesses as to whether (i) the use of property in a particular way would affect the value of other property, or (ii) the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

(k) Decision of the Trial Court. – Following its review of the decision-making body in accordance with subsection (j) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or

remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making body is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making body has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision below is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the council, board of adjustment, or planning board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Without limiting the generality of the foregoing, (i) if the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued; and (ii) if the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. By way of illustration without limitation, if the court affirms the decision of a board of adjustment that a petitioner is in violation of a zoning ordinance, the court may issue an order enjoining the petitioner from continuing the violation."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

Whenever appeals to superior court by proceedings in the nature of certiorari are authorized under the provisions of this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals. In this context, the term "city council," as used in G.S. 160A-393, shall be deemed to refer to the "board of commissioners," and the term "city" or "municipality" shall be deemed to refer to the "county."

SECTION 2.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-377. Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a designated planning board (other than a planning board comprised solely of members of a city planning staff) and the ordinance authorizes the council or planning board to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c) and G.S. 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, designated planning board, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the council or planning board to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the council or planning board; or (ii) authorizes the council or planning board to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 2.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-336. Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a designated planning board (other than a planning board comprised solely of members of a county planning staff) and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial determination in deciding whether to approve the subdivision plat, then the decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f) and G.S. 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial determination in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory

or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial determination on a preliminary or final plat application if the ordinance (i) authorizes the board of commissioners or planning board to decide whether to approve or deny the plat based not only on whether the application complies with the specific requirements set forth in the ordinance, but also whether it complies with one or more generally stated standards requiring a discretionary determination to be made by the board of commissioners or planning board; or (ii) authorizes the board of commissioners or planning board to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision beyond those set forth in the ordinance."

SECTION 3. This act becomes effective January 1, 2008, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 212
PROPOSED COMMITTEE SUBSTITUTE S212-CSST-62 [v.6]

5/22/2007 1:19:30 PM

Short Title: Land-Use Permit Appeals. (Public)

Sponsors:

Referred to:

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. – A city council, planning board, board of adjustment, or other board making quasi-judicial decision making appointed by the city council under this Article.

(2) Person. – Any legal entity authorized to bring suit in the legal entity's name.

(c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made. The facts, if any, in support of allegations that the votes of one or more members of the decision-making board were affected by impermissible bias or conflict of interest shall be set forth with particularity.

(3) Set forth the relief the petitioner seeks.

(c) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

(1) Any person meeting any of the following criteria:

a. Has an ownership interest, leasehold interest, or other interest created by easement or covenant in the property that is the subject of the decision being appealed.

b. Has an option or contract to purchase the property that is the subject of the decision being appealed.

c. Was an applicant before the decision-making board whose decision is being appealed.

(2) Any person with an ownership interest or leasehold interest in property any portion of which is located within 100 feet of the boundary of the property that is the subject of the decision being appealed.

(3) Any other person who will suffer special damages as the result of the decision being appealed. For purposes of this subdivision, 'special damages' mean a substantial harm suffered by a person that is demonstrably different in nature or degree shared by the community as a whole.

(4) An property owners association to which owners of property in a designated area belong by virtue of their ownership of property in that area or through the payment of regular dues, only if any of the members of the property owners association would have standing as an individual to challenge the decision being appealed.

(d) Respondent. – The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing before decision-making board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(f) Answer to the Petition. – The respondent may, but need not, file an answer to the petition. Except, if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subsection (c)(1) of this section may intervene as a matter of right.

(2) Any person, other than one who may intervene as a matter of right, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subsection (c)(2) and (c)(3) of this section.

(3) Any person seeking to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subsection (c) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner(s).

(h) The Record. – The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-381(d) or G.S. 160A-388(e1) or conflict of interest as described in G.S. 14-234, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

(1) When reviewing the decision of a decision-making board under the provisions of this section, the trial court shall ensure that the rights of

petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including, those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making board erred in interpreting an ordinance, the trial court may review that issue de novo, and freely substitute its own judgment for that of the decision-making board.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(k) Decision of the Trial Court. – Following its review of the decision-making board in accordance with subsection (j) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with

appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

(i) If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued.

(ii) If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

(a) Whenever appeals of quasi-judicial decisions of decision-making boards is to superior court and in the nature of certiorari as required by this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals.

(b) For purposes of this section, as used in G.S. 160A-393, the term "city council" shall be deemed to refer to the "board of commissioners," and the term "city" shall be deemed to refer to the "county."

(c) For purposes of this section, the "impermissible conflict as described in G.S. 160A-381(d) or G.S. 160A-388(e1)" of G.S. 160A-393(i)(2) shall mean "impermissible conflict as described in G.S. 153A-340(g) or G.S. 153A-345(e1)."

SECTION 2.(a) Part 2 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised

solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), G.S. 160A-388(e2), and G.S. 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if either of the following apply:

(1) The city council or planning board is authorized to decide whether to approve or deny the plat based upon all of the following:

a. Whether the application complies with the specific requirements set forth in the ordinance

b. Whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board.

(2) The city council or planning board is authorized to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision in addition those set forth in the ordinance."

SECTION 2.(b) Part 2 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-336. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), G.S. 153A-345(e2), and G.S. 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court

seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if either of the following apply:

(1) The city council or planning board is authorized to decide whether to approve or deny the plat based upon all of the following:

a. Whether the application complies with the specific requirements set forth in the ordinance

b. Whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board.

(2) The city council or planning board is authorized to approve the subdivision plat subject to conditions that impose requirements or limitations on the subdivision in addition those set forth in the ordinance."

SECTION 3. G.S. 63-34 reads as rewritten:

"**§ 63-34. Judicial review.**

(a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. Such petition shall comply with the provisions of G.S. 160A-393.

(b) ~~Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board.~~ The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(d) ~~The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or if it was not so urged, unless there were reasonable grounds for failure to do so.~~

(e) Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from."

SECTION 4. G.S. 162A-93(b) reads as rewritten:

"(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of **certiorari**, within 30 days after the finding. The petition for review in the nature of certiorari shall comply with G.S. 160A-393."

SECTION 5. This act becomes effective January 1, 2008, and applies to appeals filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 878
PROPOSED COMMITTEE SUBSTITUTE H878-PCS50680-LB-46

Short Title: Eminent Domain. (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROHIBIT CONDEMNATION OF PRIVATE PROPERTY TO BE CONVEYED TO OTHER PRIVATE OWNERS FOR ECONOMIC DEVELOPMENT AND TO PROVIDE FOR THE PAYMENT OF JUST COMPENSATION WITH RIGHT OF TRIAL BY JURY IN ALL CONDEMNATION CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 19 of Article I of the North Carolina Constitution reads as rewritten:

"**Sec. 19. Law of the land; equal protection of the laws.**

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Private property shall not be taken except for a public use. Public use does not include the taking of property for the purpose of thereafter conveying an interest in the property to a third party for economic development. The previous sentence does not apply to the taking of blighted properties as defined by general law, to the taking of properties for which the public use is preserved or utilized, or to takings for access to property. As used in this paragraph, blight includes only the physical condition of the property being taken. Just compensation shall be paid and, if demanded by the owner, shall be determined by a jury."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the next statewide primary or election, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment to prohibit condemnation of private property to be owned by other private owners for economic development and to provide for the payment of just compensation with right of trial by jury in all condemnation cases."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. The amendment set out in Section 1 of this act becomes effective upon certification and applies to takings after that date.

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

SENATE BILL 212: Land-Use Permit Appeals

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	May 22, 2007
Introduced by:	Sen. Kinnaird	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S212-CSTC		Committee Counsel

SUMMARY: Senate Bill 212 would provide a process for appeals from land-use permit decisions.

BILL ANALYSIS:

Appeals in the Nature of Certiorari: A petition for certiorari asks for review in the discretion of the reviewing court.

- Applies to appeals of quasi-judicial decisions City councils, planning boards, boards of adjustment, or other boards appointed by the city council making quasi-judicial decisions that are appealed to superior court.
- Petition for certiorari requires: 1) statement of facts as to standing, grounds for error, relief sought by petitioner.

Standing: Must have standing to petition under this section. The following individuals have standing:

- Person with ownership, leasehold, or interest created by easement or covenant in property, option or contract to purchase property, or applicant before decision-making board whose decision is being appealed.
- Person with ownership interest in property located with 100 feet of property being appealed.
- Person suffering special damages as result of decision appealed.
- Property owners association if any of the members would have standing as individual.

Respondent: City, applicant (if not the petitioner), and anyone with ownership interest in property.

Process: provided for filing, answers, intervention, contents of record.

Hearing: Court must decide petition based on contents of record, but may in its discretion all record to be supplemented with affidavits, testimony of witnesses or other documentary evidence if record is insufficient to allow determinations of: 1) standing, 2) impartiality due to conflict of interest, or 3) error in violation of constitutional rights or in excess of statutory authority.

Scope of review: Court must ensure rights of petitioner have not been prejudiced by findings or decisions 1) violating constitutional rights, 2) in excess of statutory authority, 3) inconsistent with procedures in statute or ordinance. 4) other errors of law, 5) unsupported by substantial competent evidence (as defined within statute) in view of entire record, or 6) arbitrary and capricious.

Standard of review: De nevo (trial court reviews as though no decision had been made).

Decision: Trial court may affirm, reverse and remand with instructions, or remand for further proceedings. Remand instructions will depend on whether the error was procedural or substantive. Trial court may issue injunctions upon proper motion.

The remainder of the bill specifies when this procedure would be applied under decisions in Article 18 of Chapter 153A and Article 19 of Chapter 160A).

EFFECTIVE DATE: This bill would become effective January 1, 2008 and apply to appeals filed on or after that date.

S0212e1-SMTC-CSTC

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 20

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-22-08

S. B. No. 212 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Cladfelter

1 moves to amend the bill on page 1, line 14
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "decision making" and substituting
4 "decisions";
5
6 and on page 2, line 6 by inserting "restriction,"
7 between "easement" and "or";
8
9 and on page 2, line 20 by inserting "or lessees"
10 between "owners" and "of";
11
12 and on page 2, line 20 and line 23 by
13 deleting the phrase "property owners".
14
15
16
17
18
19

SIGNED Daniel G Cladfelter

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 67

Short Title: Clarify Nuisance Abatement Laws. (Public)

Sponsors: Senator Boseman.

Referred to: Judiciary 1 (Civil).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1.2(1) reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

...

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such exhibition;

...."

SECTION 2. G.S. 19-1.2(6) reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

...

(6) Every place ~~which, as a regular course of business,~~ which is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — Immediately After Session — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob O'Brien	PEP-PNC
Gregg Thomas	NFIB
MIA BAILEY	Electricities of NC, Inc.
PHIL BERGER, JR	DIST. ATTORNEY - 17A
Rex Dorr	DA-13
Peg Dorer	Conference of DAs
Ambrielle Lawrence	Conf. of DAs
Kimberly N Overton	Conference of District Attorneys
CHIP ROTH	TEAMSTERS
Jeff Ran	GR NC
Anita Watkins	NCLM

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — Immediately After Session — May 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN C. MIDGETTE	NCPBA
Jere Royall	NC Family Policy Council
David Rani	N&O

SENATE JUDICIARY I COMMITTEE
(Civil)

May 23 2007
3:15 p.m. Around Senator Nesbitt's Desk in Chamber

MINUTES

The Senate Judiciary Committee met Wednesday, May 23, 2007 around Senator Nesbitt's desk in the Senate Chamber. A quorum was present.

Senator Martin Nesbitt called the meeting to order. He announced that Senate Bill 1131 (Grand Jury Reform/Prosecutorial Misconduct) was before the Committee. A proposed Committee Substitute was distributed to the members and Senator Soles moved that it be adopted for consideration and given a favorable report. The motion passed.

The meeting adjourned at 3:20 p.m.

Copies of Senate Bill 1131 and the Proposed Committee Substitute for SB 1131 are attached to these Minutes as Attachments 1 and 2.

Respectfully submitted,

Martin Nesbitt
Senator Martin L. Nesbitt
Chairman

Janette Whaley Lee
Janette Whaley Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1131

Short Title:	Grand Jury Reform/Prosecutorial Misconduct.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT ALLOWING A GRAND JURY TO REPORT POSSIBLE PROSECUTORIAL MISCONDUCT OR ANY OTHER MATTER THAT COULD ADVERSELY AFFECT THE INDEPENDENCE, FAIRNESS, AND IMPARTIALITY OF THE GRAND JURY AND REQUIRING A WRITTEN RECORD OF ALL GRAND JURY PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-623 is amended by adding a new subsection to read:

"(i) All proceedings of the grand jury shall be recorded and transcribed. Records and transcriptions of grand jury proceedings are not public records under Chapter 132 of the General Statutes."

SECTION 2. G.S. 15A-628 is amended by adding a new subdivision to read:

"(6) May confer with, and report to, the presiding or convening judge concerning possible prosecutorial misconduct or any other matter that could adversely affect the independence, fairness, and impartiality of the grand jury."

SECTION 3. Article 31 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-632. Reporting prosecutorial misconduct and other matters.**

Notwithstanding G.S. 15A-623 or any other provision of law, the grand jury may, after consultation with the presiding or convening judge and only with that judge's permission, report to federal law enforcement authorities on prosecutorial misconduct and any other matter that could adversely affect the independence, fairness, and impartiality of the grand jury."

SECTION 4. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S **3**

SENATE BILL 1131

Judiciary I (Civil) Committee Substitute Adopted 5/23/07
Third Edition Engrossed 5/23/07

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

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT ALLOWING A DISTRICT COURT JUDGE TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

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

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

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

(1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, district court judge of this State, or a magistrate; and

b. With the consequent declaration by the ~~minister~~ minister, district court judge of this State, or magistrate that the persons are husband and wife; or

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

Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

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

SENATE JUDICIARY I COMMITTEE
(Civil)

June 5, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, June 5th in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Members, Senator Charlie Albertson, Senator Julia Boseman, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator Janet Cowell, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Vernon Malone, Senator Floyd McKissick, Senator Tony Rand, Senator Richard Stevens, and Senator Jerry Tillman. .

Chairman Nesbitt called the meeting to order and called House Bill 784 as the first order of business, which is a bill changing the age for execution from 17- to 18-years-old. Nationally the legal age for execution is 18-years-old, making the existing statute unconstitutional. Senator Cowell motioned for favorable report. The motion passed and Senator Jenkins said that he handle the bill in Senate Chamber.

The second order of business was House Bill 1227, a local bill that allows New Hanover Regional Medical Center exemptions from statutory provisions about acquisition and operation of property. Currently, public hospitals must have a lowest bidder for projects, unlike private and not-for-profit hospitals. Senator Nesbitt asked why the hospital needed the bill, Representative McComas, the house sponsor of the bill, said is was for competitiveness. Staff Attorney Erika Churchill said that the hospital would be required to have an internal audit. Senator Berger asked if this would apply to open meeting law statutes, Churchill said it would. Senator Hoyle expressed concern about the bidding process, that there could be the potential for bias in bidding. Senator Rand noted that hospitals were "exceedingly difficult" to build, therefore, limiting the pool of potential applicants for a construction job.

Senator Hoyle motioned for favorable report, however discussion continued. Hugh Tilson, lobbyist for the North Carolina Hospital Association, explained to the committee that there were significantly more for profit and non-profit hospitals in North Carolina, and that there were roughly 30 public hospitals compared to more than 100 of for and not-for-profit. Senator Clodfelter questioned whether construction project would have to comply with local zoning and land use regulations. He then offered an amendment adding that the hospital authority would have to "comply with all local zoning and land use regulations."

Senator Rand motioned for the bill to be rolled into a committee substitute and given favorable report. The motion passed unanimously.

The third item of business was House Bill 1519, modifying school funding mediation statutes. According to a Bill Analysis written by Staff Attorney Kara McCraw, the bill

would mandate that the conclusion of the school of fiscal year not resolve an appealed controversy over a funding dispute between the county commissioners and school board; would require a final judgment be legally binding on the parties and would prevent appropriations from being reduced in subsequent fiscal years to offset a final judgment.

Senator Berger raised concerns about the language of the bill at lines 19 and 20, asking if the language of the bill could create litigation. Senator Stevens said he was concerned with lines 22 through 24, questioning "such payment shall include interest and saying that as public money such funds would not be interest bearing. Senator Rand said such language should be amended and stricken from the bill. Senator Stevens offered the amendment and the amendment passed unanimously. Senator Cowell motioned for House Bill 1519 to receive favorable reports as a new committee substitute incorporating the amendment. The motioned carried unanimously.

The last items of business were Senate Bill 1357 and House Bill 1354, the Motor Vehicle Chop Shop Act. The Bills provide criminal and civil penalties for operating a "Chop Shop," considered as a place where stolen vehicles are altered to make unidentifiable or to resell.

Senator Graham, primary sponsor of the Senate Bill, said that chop shops are becoming more prevalent in Mecklenburg County and that he knew of no opposition to the Bill. Senator Tillman asked if there was a provision to close down shops. Staff Attorney Bill Gilkeson said that there was in provisions for "abatement of nuisance." Staff Attorney Hal Pell said that currently possessing stolen goods is a misdemeanor, and this bill would change the statute to make it a felony. Discussion continued and Senator Nesbitt carried over the bill and the meeting adjourned at 10:55 a.m.

Copies of House Bill 784, a Bill Analysis for HB 784, a Federal Requirement Document for HB 784, the 3rd Edition of House Bill 1227, a Bill Analysis for HB 1227, the Clodfelter Amendment to HB 1227, a Proposed Committee Substitute for HB 1519, a Bill Analysis for the PCS to HB 1519, the Stevens Amendment to the PCS for HB 1519, the 2nd Edition of House Bill 1354, a Bill Analysis for HB 1354, Senate Bill 1357, a Legislative Incarceration Fiscal Note for HB 1354 (2nd Ed.) are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 1

HOUSE BILL 784

Short Title:	Execution/Change Age.	(Public)
Sponsors:	Representatives Earle, Glazier, Harrison, Parmon (Primary Sponsors); Alexander, Cunningham, Fisher, Hall, Insko, Lucas, Luebke, Wainwright, and Weiss.	
Referred to:	Judiciary II.	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FIRST DEGREE MURDER STATUTE TO CONFORM WITH THE UNITED STATES SUPREME COURT RULING IN ROPER V. SIMMONS THAT THE EXECUTION OF A DEFENDANT WHO WAS UNDER EIGHTEEN YEARS OF AGE AT THE TIME OF THE MURDER IS UNCONSTITUTIONAL AS RECOMMENDED BY THE HOUSE INTERIM STUDY COMMITTEE ON CAPITAL PUNISHMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under ~~17~~18 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. ~~Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000.~~ All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or

preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

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

HOUSE BILL 784: Execution/Change Age

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 5, 2007
Introduced by:	Reps. Earle, Glazier, Harrison, Parmon	**Summary by:**	Kara McCraw Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 784 amends the first degree murder statute to conform to the US Supreme Court ruling in Roper v. Simmons, holding that execution of a defendant who was under 18 years of age at the time of the murder is unconstitutional.

CURRENT LAW: G.S. 14-17 defines the offense of murder in the first degree, and outlines the penalties for such offenses. Murder in the first degree includes:

- murder perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction.
- murder by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing.
- murder committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon.

Any individual convicted of murder in the first degree shall be punished with death or imprisonment for life without parole. Individuals under the age of 17 at the time of the murder shall be punished with imprisonment for life without parole, unless an individual under the age of 17 commits murder in the first degree while serving a prison sentence for a prior murder, or while on escape from a prison sentence for a prior murder. In those cases, an individual under the age of 17 shall be punished with death or imprisonment for life without parole.

BILL ANALYSIS: House Bill 784 would provide that individuals under 18, rather than 17, at the time the murder was committed shall be punished only with life without parole for conviction of first degree murder.

The bill would also remove the language permitting the punishment of death for an individual under the age of 17 who commits murder in the first degree while serving a prison sentence for a prior murder, or while on escape from a prison sentence for a prior murder.

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

BACKGROUND: In 2005, the U.S. Supreme Court held in the case of Roper v. Simmons, 543 U.S. 551 (2005), that the Eighth and Fourteenth Amendments did not permit imposition of capital punishment on offenders who were under the age of 18 when their crimes were committed, reversing the U.S. Supreme Court's earlier holding in Stanford v. Kentucky, 492 U.S. 361, (1989), that imposition of capital punishment on an individual for a crime committed at 16 or 17 years of age did not constitute cruel and unusual punishment under the Eighth Amendment. The N.C. Supreme Court applied the ruling in Roper in the case of State v. Chapman, 359 N.C. 328 (2005) to vacate the death sentence of an individual who was 17 years old at the time of the murder he committed.

This bill summary was substantially contributed to by Heather Fennell, Staff Counsel.

H0784e1-SMTC

Session 2007

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

House Bill 784

Execution/Change Age

Bill Primary Sponsor(s):	Earle, Glazier, Harrison, Parmon
Relevant Federal Law:	*Roper v. Simmons, 542 U.S. 551 (2005).*
☒ 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 784 would amend G.S. 14-17 to apply capital punishment for first degree murder only to individuals 18 or older at the time the offense was committed. North Carolina statutory law currently permits capital punishment for those 17 or older at the time of the offense, and for those under 17 if the murder is committed while serving a prison sentence for a prior murder or while on escape from prison for a prior murder.

The United States Supreme Court held in Roper v. Simmons, 543 U.S. 551 (2005), that the Eighth and Fourteenth Amendments did not permit states to impose capital punishment on offenders who were under the age of 18 when their crimes were committed. The United States Supreme Court reversed its earlier holding in Stanford v. Kentucky, 492 U.S. 361 (1989), that imposition of capital punishment on an individual for a crime committed at 16 or 17 years of age did not constitute cruel and unusual punishment under the Eighth Amendment. The Supreme Court found a majority of states have already rejected the imposition on juvenile offenders under 18, and held that such an imposition was now prohibited by the Eighth and Fourteenth Amendments. Roper, 543 U.S. at 568.

COMPLIANCE CONSIDERATIONS

The N.C. Supreme Court has applied the ruling in Roper in the case of State v. Chapman, 359 N.C. 328 (2005), to vacate the death sentence of an individual who was 17 years old at the time of the offense.

REVIEW AND APPROVAL

Prepared By: Kara A. McCraw
Staff Attorney

Date: June 4, 2007

Approved By: Terrence D. Sullivan
Director of Research

Date: June 4, 2007

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1227

Committee Substitute Favorable 4/12/07

Committee Substitute #2 Favorable 5/4/07

Short Title: New Hanover Regional Medical Ctr/Contracts. (Local)

Sponsors:

Referred to:

March 29, 2007

A BILL TO BE ENTITLED

AN ACT EXEMPTING NEW HANOVER REGIONAL MEDICAL CENTER, A NEW HANOVER COUNTY HOSPITAL, FROM STATUTORY REQUIREMENTS GOVERNING PUBLIC CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. No provision of law with respect to the acquisition or operation of property by other public bodies shall be applicable to New Hanover Regional Medical Center (hereinafter "Center") unless otherwise specified by the General Assembly, except that the Center shall do all of the following:

(1) Obtain a resolution from the Board of Commissioners of New Hanover County approving the Center's exemption from statutory requirements governing public contracts as provided in this act.

(2) Comply with the minority business participation requirements set forth in Article 8 of Chapter 143 of the General Statutes.

(3) Comply with the certificate of need requirements set forth in Article 9 of Chapter 131E of the General Statutes.

(4) Conduct an annual independent audit of all contracts for construction or repair work that would otherwise be subject to the competitive bidding requirements provided in G.S. 143-129. ← amendment

SECTION 2. The annual independent audit required by Section 1 of this act shall be reported to the Center's Board of Trustees. The audit shall include the specific reasons for utilizing the authority granted by this act.

SECTION 3. The Center shall comply with the provisions of Chapter 132 of the General Statutes as applicable to other public hospitals.

SECTION 4. Once a contract is entered into by the Center pursuant to the provisions of this act, the Center shall prepare a document setting out the reasons for utilizing the authority granted by this act, include the document in its official files, and make the document available to the public.

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 1227:
New Hanover Regional Medical Ctr/Contracts

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 1, 2007
Introduced by:	Rep. McComas	**Summary by:**	R. Erika Churchill
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 1227 provides that, with respect to the acquisition or operation of property, no statutory provision applicable to public bodies shall be applicable to the New Hanover Medical Center (Center). This allows the Center to award contracts without competitive bidding or other requirements of Article 8 of Chapter 143 of the General Statutes.

BILL ANALYSIS: House Bill 1227 would authorize the New Hanover Regional Medical Center (Center) to procure construction and goods without complying with the statutory provisions regarding acquisition and operation of property. In order for the exemption to apply, the Center must meet certain requirements:

- The New Hanover Board of Commissioners must approve the exemption granted in the act.
- The Center must comply with the minority business participation requirements in Article 8 of Chapter 143.
- The Center must meet the Certificate of need requirements in Article 9 of Chapter 131E.
- There must be an annual independent audit of all construction contracts or repair work otherwise subject to competitive bidding pursuant to G.S. 143-129.

In addition, the bill requires the Center to:

- Submit its annual audit report to the Center's Board of Trustees.
- Include the reasons for utilizing this act in the audit report.
- Comply with the applicable open records laws.
- Prepare a document setting out the reasons for utilizing the authority granted by this act, include the document in its official files, and make the document available to the public, once a contract is entered into by the Center pursuant to the provisions of this act.

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

H1227e3-SMST

Giles Perry and Steve Rose substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 6

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1227 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Clodfelter
Sen.)

moves to amend the bill on page 1, line 19-20

( ) WHICH CHANGES THE TITLE

by _____

inserting the following between those lines:

"(5) Comply with all applicable local zoning and land use regulations.".

SIGNED Daniel G Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H D

HOUSE BILL 1519
Committee Substitute Favorable 5/9/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1519-CSTC-37 [v.1]

6/4/2007 12:56:50 PM

Short Title: Modify School Funding Mediation Law. (Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE LAW PERTAINING TO THE RESOLUTION OF DISPUTES BETWEEN THE BOARD OF EDUCATION AND THE BOARD OF COUNTY COMMISSIONERS REGARDING SCHOOL FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-431(d) reads as rewritten:

"(d) ~~If an appeal is taken to the appellate division of the General Court of Justice, and if such an appeal would result in a delay beyond a reasonable time for levying taxes for the year, the judge shall order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to that fund to equal the amount of this fund for the previous year.~~ An appeal may be taken to the appellate division of the General Court of Justice, and notice of appeal shall be given in writing within 10 days after entry of the judgment. All papers and records relating to the case shall be considered a part of the record on appeal. The conclusion of the school or fiscal year shall not be deemed to resolve the question in controversy between the parties while an appeal is still pending. Any final judgment shall be legally binding on the parties at the conclusion of the appellate process. The payment of any final judgment by the county in favor of the local school administrative unit shall not be considered, or used in any manner, to deny or reduce appropriations to the local school administrative unit by the county in fiscal years subsequent to the one at issue to offset such payment of a final judgment. Such payment shall include interest, if interest is otherwise due under other law, at the legal rate calculated from the date of the county budget ordinance for the fiscal year at issue until paid."

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

HOUSE BILL 1519:
Modify School Funding Mediation Law

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 5, 2007
Introduced by:	Reps. Glazier, England, Williams, Cotham	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to Second Edition H1519-CSTC		

SUMMARY: The second edition of House Bill 1519 would:

- *Mandate that the conclusion of the school or fiscal year not resolve an appealed controversy over a funding dispute between the county commissioners and school board,*
- *Require a final judgment be legally binding on the parties, and*
- *Prevent appropriations from being reduced in subsequent fiscal years to offset a final judgment.*

CURRENT LAW: G.S. 115C-431 governs the procedure for resolution of disputes between boards of education and boards of county commissioners for disputes over appropriations to the local current expense fund or capital outlay fund. If the dispute is unresolved after a joint board meeting, the parties must commence a mediation. If the mediation is unsuccessful, an action may be filed in superior court and will be given precedence over other business of the court.

G.S. 115C-431(d) provides that an appeal from the superior court decision may be taken to the appellate division. If the appeal would delay beyond a reasonable period of time for levying taxes for the year, the trial judge may order the county commissioners to deposit a sum of money equal to the previous year's funding in the local current expense fund for use by the local school administrative unit. All papers and records related to the case will be considered part of the record on appeal.

BILL ANALYSIS: House Bill 1519 would modify G.S. 115C-431(d) by removing the language requiring that if an appeal is taken and results in a delay, a sum must be deposited by the county commissioners with the local school administrative unit.

House Bill 1519 would add the following new requirements:

- Notice of appeal must be given with 10 days after entry of judgment.
- If the appeal is still pending beyond the school or fiscal year which is the subject of the budget dispute, the controversy between the parties cannot be deemed to be resolved.
- Final judgment is binding on the parties at the conclusion of the appeals process.
- Payment of final judgment must not be considered or used to reduce subsequent fiscal year appropriations to the local school administrative unit to offset a final judgment. Payments must include interest, if otherwise due under law, calculated at the legal rate from the date of the county budget ordinance for the fiscal year in question.

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

BACKGROUND: In Cumberland v. Cumberland, 113 N.C. App. 164 (1993), the Court of Appeals held that an appeal from a dispute over funding between the county commissioners and local school board was moot because the fiscal year in question had already ended and there was no longer a controversy for the Court to resolve. Mootness is a judicial doctrine that requires a court to dismiss a case if either the original controversy between the parties is no longer an issue, or relief has been granted. The Court acknowledged that the holding might effectively block nearly all appeals of disputed budgets, but stated that the current procedure was unworkable and that the General Assembly should develop a procedure for expedited review which terminated on the local level.

H1519e2-SMTC-CSTC

Attachment 9

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1519 DATE _____

S. B. No. ~~0~~ Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Stevens
)
Sen.)

1 moves to amend the bill on page 1, line 22-24

2 ( ) WHICH CHANGES THE TITLE

3 by striking the sentence beginning "Such payment

4 shall include interest..."

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 1354*
Committee Substitute Favorable 5/2/07

Short Title: Motor Vehicle Chop Shop Act. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A MOTOR VEHICLE CHOP SHOP LAW REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF STOLEN OR ALTERED MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Motor Vehicle Chop Shop Act.

"**§ 20-400. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Article to the defined words and phrases and their cognates:

(1) Chop shop. – Any building, lot, or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to do either of the following:

a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part or to prevent the identification of the motor vehicle or motor vehicle part.

b. Sell or dispose of the motor vehicle or motor vehicle part.

(2) Instrumentality. – Motor vehicle, motor vehicle part, other conveyance, tool, implement, or other instrumentality.

(3) Vehicle identification number. – A number, a letter, a character, a datum, a derivative, or a combination thereof, used by the

manufacturer or the Division for the purpose of uniquely identifying a motor vehicle or motor vehicle part.

"**§ 20-401. Chop shop operation unlawful; restitution.**

(a) Criminal Penalties. – It shall be punishable as a Class H felony:

(1) For any person to own, operate, or conduct a chop shop.

(2) For any person to transport a motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop.

(3) For any person to sell, transfer, purchase, or receive a motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.

(4) For any person to buy, dispose of, sell, transfer, or possess a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed. The provisions of this subdivision shall not apply to a motor vehicle scrap processor who, in the normal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part before or during the processing.

(b) Restitution. – In addition to any other punishment provided for by law, any person who violates this section shall be ordered to make restitution to the lawful owner of any stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

Financial loss includes, but is not limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. Lawful owner includes an innocent bona fide purchaser for value of a stolen motor vehicle or stolen motor vehicle part who does not know that the motor vehicle or motor vehicle part is stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser for value who has subrogated the claim.

The court shall determine the amount and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In that case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution."

SECTION 2. G.S. 14-86.1(a) reads as rewritten:

"(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or used by any person in the commission of armed or common-law robbery, or used in violation of G.S. 20-401, or used by any person in the commission of any larceny when the value of the property taken is more than two thousand dollars ($2,000) shall be subject to forfeiture as provided herein, except that:

(1) No conveyance used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;

(2) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;

(3) No conveyance shall be forfeited pursuant to this section unless the violation involved is a felony;

(4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;

(5) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section;

(6) The trial judge in the criminal proceeding which may subject the conveyance to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner the procedures provided in subsection (e) shall apply.

As used in this section concerning a violation of G.S. 20-401, the term "conveyance" includes any "instrumentality" as defined in G.S. 20-400(2)."

SECTION 3. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place wherein or whereon are carried on, conducted, or permitted chop shop activities in violation of G.S. 20-401.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

SECTION 4. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, ~~or~~ two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior occurrences within five years of violation of G.S. 20-401, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued,

begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 1354:
Motor Vehicle Chop Shop Act

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 4, 2007
Introduced by:	Reps. Tillis, Saunders, R. Warren, Kiser	**Summary by:**	William R. Gilkeson Committee Co-Counsel
Version:	Second Edition		

SUMMARY: ***The Second Edition of House Bill 1354 provides specific criminal and civil penalties for operating a "chop shop," defined as a place where stolen vehicles are altered so as to make them unidentifiable or to sell them.***

[As introduced, this bill was identical to S1357, as introduced by Sen. Graham, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: Currently, criminal statutes prohibit possessing or receiving stolen vehicles and altering vehicle identification numbers (VINs). The penalty for altering a VIN number is a Class I felony.

BILL ANALYSIS:

Chop Shop Defined. The bill creates a new Article in Chapter 20, the Motor Vehicle Law, specifically dealing with chop shops. It defines a "chop shop" as any building, lot, or other premises where one or more people are or have been knowingly engaged in altering any vehicle or vehicle part known to have been stolen for the purpose either of making the vehicle unidentifiable or of selling them.

Crime of Operating Chop Shop. The bill makes it a Class H felony (presumptive 5-6 months community/intermediate/active sentence) to own or operate a chop shop, to transport a vehicle to or from a chop shop, to sell or transfer or to buy or receive a vehicle or part to or from a place knowing it to be a chop shop, or to buy, sell, transfer, or possess a vehicle or part knowing that the VIN number has been altered. (Scrap dealers crushing vehicles are exempted.)

Restitution. The bill provides for restitution to the owner of a stolen car, that person's insurer, or another person injured by the violation of the act.

Forfeiture. The bill amends the following current statutes to include chop shop operations as justification for forfeiture of property:

- G.S. 14-86.1 – forfeiture of vehicles, parts, and instrumentalities.
- Chapter 19 (Abatement of Nuisances) -- real property.

EFFECTIVE DATE: December 1, 2007.

BACKGROUND: The bill is patterned after a law in South Carolina.

H1354e2-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1357*

Short Title:	Motor Vehicle Chop Shop Act.	(Public)
Sponsors:	Senators Graham; Clodfelter and Dannelly.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A UNIFORM MOTOR VEHICLE CHOP SHOP LAW REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF STOLEN OR ALTERED MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Motor Vehicle Chop Shop, Stolen, And Altered Property Act.

"**§ 20-400. Short title.**

This act may be cited as the "Motor Vehicle Chop Shop Act."

"**§ 20-401. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Article to the defined words and phrases and their cognates:

(1) Chop shop. – Any building, lot, or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order either to:

a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part or to prevent the identification of the motor vehicle or motor vehicle part or

b. Sell or dispose of the motor vehicle or motor vehicle part.

(2) Unidentifiable. – The uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor

vehicle theft investigative procedures and motor vehicle identification examination techniques or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.

(3) Vehicle identification number. – A number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer or the Department of Motor Vehicles for the purpose of uniquely identifying a motor vehicle or motor vehicle part.

"§ 20-402. Chop shop operation unlawful; restitution.

(a) It shall be unlawful for any person to own, operate, or conduct a chop shop, to transport a motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop, or sell, transfer, purchase, or receive a motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.

(b) It shall be unlawful for any person to knowingly alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or knowingly remove a vehicle identification number, or cause any of the above to be done, with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part.

(c) It shall be unlawful for any person to buy, dispose, sell, transfer, or possess a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed.

The provisions of this subsection shall not apply to a motor vehicle scrap processor who, in the normal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part before or during the processing.

(d) In addition to any other punishment provided for by law, any person who violates this section shall be ordered to make restitution to the lawful owner of any stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

Financial loss includes, but is not limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. Lawful owner includes an innocent bona fide purchaser for value of a stolen motor vehicle or stolen motor vehicle part who does not know that the motor vehicle or motor vehicle part is stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser for value who has subrogated the claim.

The court shall determine the amount and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In that case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

"§ 20-403. Seizure of the motor vehicles, tools, implements, or other instrumentalities of the crime.

(a) All motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities possessed or used by any person in violation of G.S. 20-402 shall be subject to forfeiture as provided herein, except that:

(1) No motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;

(2) No motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;

(3) No motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities shall be forfeited pursuant to this section unless the violation involved is a felony;

(4) A forfeiture of any motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;

(5) No motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities to forfeiture under this section; and

(6) The trial judge in the criminal proceeding which may subject the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner, the procedures provided in subsection (e) of this section shall apply.

(b) Any motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities subject to forfeiture under this section may be seized by any law enforcement officer upon process issued by any district or superior court having original jurisdiction over the offense except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or subject to a search under a search warrant; or

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this section.

(c) The motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities shall be deemed to be in custody of the law enforcement agency seizing it. The law enforcement agency may remove the property to a place designated by it or request that the North Carolina Department of Justice or Department of Crime Control and Public Safety take custody of the property and remove it to an appropriate location for disposition in accordance with law; provided, the conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by an officer of the agency seizing the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities and shall be conditioned upon the return of said property to the custody of said officer on the day of trial to abide the judgment of the court.

(d) Whenever a motor vehicle, motor vehicle part, other conveyance, tool, implement, or other instrumentality is forfeited under this section, the law enforcement agency having custody of it may:

(1) Retain the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities for official use; or

(2) Transfer the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities which were forfeited under the provisions of this section to the North Carolina Department of Justice or to the North Carolina Department of Crime Control and Public Safety when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice or the North Carolina Department of Crime Control and Public Safety, said motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities may be of official use to the North Carolina Department of Justice or the North Carolina Department of Crime Control and Public Safety; or

(3) Upon determination by the director of any law enforcement agency that a motor vehicle, motor vehicle part, other conveyance, tool, implement, or other instrumentality transferred pursuant to the provisions of this section is of no further use to said agency, such motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities may be sold as surplus property in the same manner as other motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities owned by the law enforcement agency. The proceeds from such sale, after deducting the cost thereof, shall be paid to the school fund of the county in which said conveyance was seized. Any conveyance

transferred to any law enforcement agency under the provisions of this section which has been modified or especially equipped from its original manufactured condition so as to increase its speed shall be used in the performance of official duties only. Such conveyance shall not be resold, transferred, or disposed of other than as junk unless the special equipment or modification has been removed and destroyed and the vehicle restored to its original manufactured condition.

(e) All motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities subject to forfeiture under the provisions of this section shall be forfeited pursuant to the procedures for forfeiture of conveyances used to conceal, convey, or transport intoxicating beverages found in G.S. 18B-504. Provided, nothing in this section or G.S. 18B-504 shall be construed to require a conveyance to be sold when it can be used in the performance of official duties of the law enforcement agency.

"**§ 20-404. Civil proceedings.**

(a) The Attorney General, any district attorney, or any aggrieved party may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation G.S. 20-402. If the plaintiff in the proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, any court of competent jurisdiction after due provision for the rights of innocent persons shall grant relief by entering an appropriate order or judgment, including, but not limited to:

(1) Ordering any defendant to be divested of any interest in any property;

(2) Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;or

(3) Ordering the surrender of the charter of a corporation organized under the laws of the State or the revocation of a certificate authorizing a foreign corporation to conduct business within the State upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by this Article and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked.

(b) In a proceeding under this section, injunctive relief must be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury must be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an

aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

(c) Any person injured, directly or indirectly, by conduct constituting a violation by any person of G.S. 20-402, in addition to any other relief, shall have a cause of action for treble damages.

(d) A final judgment or decree rendered against the defendant in any civil or criminal proceeding shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to the civil or criminal proceeding.

(e) Personal service of any process in an action under this section may be made upon any person outside the State in a manner provided for in the North Carolina Rules for Civil Procedure.

(f) Obtaining any civil remedy under this Article does not preclude obtaining any other civil or criminal remedy under either this act or any other provision of law. Civil remedies under this section are supplemental and are not mutually exclusive.

(g) Any real property upon which a violation of G.S. 20-402 is found, by a court of competent jurisdiction, to have occurred shall be deemed a public nuisance as a matter of law and shall be forfeited consistent with the provisions of G.S. 19-6.1.

"**§ 20-405. Penalties.**

A person violating G.S. 20-402 of this Article shall be guilty of a Class G felony. A person having been previously convicted of a violation of this section shall, upon commission of a second or subsequent violation, be guilty of a Class F felony."

SECTION 2. 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.

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1354 (Second Edition)

SHORT TITLE: Motor Vehicle Chop Shop Act.

SPONSOR(S): Representatives Kiser, Saunders, R. Warren, and Tillis

FISCAL IMPACT

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

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
GENERAL FUND					
Correction	**Possible significant fiscal impact; amount cannot be determined. See pp. 2-4**				
Judicial	**Possible significant fiscal impact; amount cannot be determined. See p. 5-6**				
DOJ	**No significant impact is assumed.**				
CCPS	**No significant impact is assumed.**				
Law Enforcement	**No significant impact is assumed.**				
TOTAL EXPENDITURES:	**Amount cannot be determined.**				
ADDITIONAL PRISON BEDS: (cumulative)*	**Some expected increase in bed needs; however, the prison population impact is indeterminate.**				
POSITIONS: (cumulative)	**Amount cannot be determined.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Justice; Department of Crime Control and Public Safety; Local law enforcement.

EFFECTIVE DATE: December 1, 2007.

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

BILL SUMMARY: Section 1 of H.B. 1354 enacts new Article 18 of G.S. Chapter 20, entitled the "Motor Vehicle Chop Shop Act."

- New G.S. 20-400 defines a "chop shop" as any premises where a person is "knowingly engaged in altering, destroying, disassembling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud..." with the intent to misrepresent the vehicle or part, or to sell/dispose of the vehicle or part.
- New G.S. 20-401(a) creates four new Class H felony offenses for any person to:
  - 1) own, operate, or conduct a chop shop;
  - 2) transport a motor vehicle or part to or from a known chop shop;
  - 3) sell, transfer, purchase, or receive a motor vehicle or part to or from a known chop shop; and
  - 4) buy, dispose of, sell, transfer, or possess a motor vehicle or part, knowing the vehicle identification number of the vehicle or part has been altered or counterfeited (offense does not apply to motor vehicle scrap processors acting in good faith during normal business).

  G.S. 20-401(b) requires an offender to make restitution to the lawful owner of the stolen property or to the owner's insurer, and to any other person for financial loss sustained.

Section 2 amends G.S. 14-86.1(a) to provide for the forfeiture of any conveyance used to violate new G.S. 20-401. Specifies that the term "conveyance" includes any "instrumentality" as defined in new G.S. 20-400(2) – "motor vehicle, part, other conveyance, tool, implement or other instrumentality."

Section 3 amends G.S. 19-1 to add new subsection (b2), including as a nuisance the building, use, ownership, etc. of a place for violation of G.S. 20-401.

Section 4 amends G.S. 19-6.1 to provide for the forfeiture of real property in nuisance abatement actions, where the nuisance consists of, or includes, two prior occurrences of violation of G.S. 20-401 within five years.

Section 5 provides for the severability of the Act.

Section 6 provides that the Act becomes effective December 1, 2007 and applies to offenses committed on or after that date.

Source: Adapted from Bill Digest H.B. 1354 (04/05/0200).

ASSUMPTIONS AND METHODOLOGY:

As defined in new G.S. 20-400 for the purposes of the Act, the term "chop shop" includes a wide range of proscribed actions concerning motor vehicles and their parts. This breadth of definition and range of prohibited acts (G.S. 20-401) encompass elements of several existing offenses.[1] However, it is not known how prosecution of these existing offenses might change under this bill, or how many violations might occur for the proposed offenses. Nor is it known how many "chop shops" currently exist within the state.

Although the relatively high charge and conviction frequencies for similar, existing offenses indicate that this proposal *could* have a significant fiscal impact, the extent of such impact is

[1] North Carolina Sentencing and Policy Advisory Commission.

indeterminate at this time. Nevertheless, based on current resources, Fiscal Research expects that any resultant charge and/or conviction for the new offenses, or resultant abatement action, will generate some additional fiscal impact.

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission analyzes each bill that proposes or alters a criminal penalty, and assesses its impact on the projected prison population (relative to SPAC annual population projections). The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

As previously noted, the offenses created by proposed G.S. 20-401 encompass elements of several existing offenses. However, due to imperfect matches between these elements, the Sentencing Commission cannot estimate how many existing convictions might instead become eligible for conviction under H.B. 1354, or how many new convictions might occur. A general discussion of each proposed offense, and its potential impact on the prison population is included below.

1. "Own, operate, or conduct a chop shop."

Though the offense of owning, operating, or conducting a chop shop requires the additional element of maintaining a physical location constituting a chop shop ("...any building, lot, or other premises..."), persons eligible for conviction of this offense also include an unknown portion of those who could be convicted of the following offenses. It is not known how many of the convictions in the table below may instead be convicted as Class H felonies under the proposed bill, or how sentencing practices may differ for the proposed offenses.

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-160	Injury to personal property	2,1	2,175
G.S. 14-71.1	Possession of stolen goods (F)	H	713
G.S. 14-71.1	Possession of stolen goods (M)	1	2,080
G.S. 20-106	Possess stolen motor vehicle	H	355
G.S. 20-107	Tampering with vehicle	2	1
G.S. 20-107(a)	Tampering with vehicle parts	2	0

2. "Transport a motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop."

Those eligible for conviction of transporting a motor vehicle to a chop shop include an unknown portion of those convicted for possessing a stolen motor vehicle (Class H felony) under G.S. 20-106. In FY 2005/06, there were 355 convictions for possession of a stolen motor vehicle. It is probable that conviction for this proposed offense would occur in addition to conviction for larceny of a motor vehicle, if a theft involves delivery of the stolen vehicle to a chop shop. In FY 2005/06, there were 339 convictions for felony larceny of a motor vehicle (Class H) and 19

convictions for misdemeanor larceny of a motor vehicle (Class 1). In addition, there were 826 convictions for felony larceny, but it is not known whether any of these convictions were for larceny of a motor vehicle. Consequently, some additional prison bed impact is likely to occur as a result of consecutive sentencing. However, it is not known how many offenses would be affected.

Moreover, those eligible for conviction of transporting a motor vehicle part to a chop shop include an unknown portion of those currently convicted of the following offenses. It is not known how many of the convictions in the table below may instead be convicted as Class H felonies under the proposed bill, or how sentencing practices may differ for the proposed offenses.

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-71	Receiving stolen goods (M)	1	28
G.S. 14-71	Receiving stolen goods (F)	H	7
G.S. 20-106	Possess stolen motor vehicle	H	355

3. "Sell, transfer, purchase, or receive a motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop."

Those eligible for conviction of "trading" a motor vehicle or motor vehicle part also include an unknown portion of those currently convicted of the offenses in the above table. It is not known how many of these convictions may instead be convicted as Class H felonies under the proposed bill, or how sentencing practices may differ for the proposed offenses.

4. "Buy, dispose of, sell, transfer, or possess a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered..."

According to the Sentencing Commission, this is a new offense with unique elements. Thus, there is no historical data from which to estimate its impact. It is not known how many violations might occur.

As implied, the potential impact on the state prison population would be driven by: 1) existing misdemeanor offenses being prosecuted as Class H felony offenses, and resulting in active sentences;[2] 2) separate convictions and active sentences occurring for the proposed Class H felony offenses, in addition to convictions for existing offenses – resulting in consecutive active sentences; and 3) new Class H felony convictions and active sentences for these new offenses, apart from any association to an existing offense. Accordingly, FRD expects that any combination of these effects would increase prison bed demand, requiring the construction of additional beds.

In FY 2005/06, 34% of all Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Although the potential impact on the prison population is indeterminate, assuming that at least three Class H convictions occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first*

[2] Misdemeanor active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties $18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

applicable year; two additional beds in the second year; and one new employee in the second year.

Assuming these thresholds and inmate assignment to medium custody, the construction of two additional prison beds within a new, stand alone facility could cost the State $136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately $84,240.[3] These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total $58,196 by FY 2009-10.[4]

Department of Correction – Division of Community Corrections

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. Thus, *assuming that future convictions for the proposed offense occur, the Division of Community Corrections could assume some additional costs for offenders placed under its supervision.* It is not known how non-active sentencing practices might differ for the proposed offenses (e.g. how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long).

General supervision of intermediate and community offenders by a probation officer costs $1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction is much higher, ranging from $7.71 to $14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated $14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

It is not known how many additional criminal charges or abatement actions might occur, or how prosecution tactics would differ in response to the proposed offenses. Accordingly, the potential fiscal impact on the Courts is indeterminate.

Nonetheless, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. The table below illustrates the potential difference in estimated costs for criminal cases, by trial and guilty plea, assuming that some existing misdemeanor offenses are instead prosecuted as felonies under this proposal. Effectively enhancing the penalties from Classes 1 or 2 misdemeanors to Class H felonies will elevate future cases to superior court, rather than district court. This elevation will

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[3] New, "stand alone" institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

"Add-on" facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody "add-on" is built adjacent to an existing perimeter. "Add-on" facilities employ the same EOC custody configurations as "stand alone" (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

[4] Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

increase jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08				
Offense Class	*Trial*	*Plea*	*Change in Cost: Trial**	*Change in Cost: Plea**
Class 2 Misdemeanor	$2,770	$230	$4,575	$95
Class 1 Misdemeanor	$3,702	$243	$3,643	$82
Class H Felony	$7,345	$325	N/A	N/A
** Change in cost, relative to prosecution at Class H felony level.*				

Similarly, although it is not known how many civil abatement actions might occur, any additional case brought by the Attorney General, any district attorney, or any aggrieved party against persons violating G.S. 20-401 is expected to increase superior court workload.

Law Enforcement: Department of Justice; Crime Control and Public Safety; and Local Government

Current G.S. 19-2.1 authorizes the Attorney General to bring a civil action for nuisance abatement. Accordingly, some slight increase in workload could be incurred for actions brought against alleged chop shops. Likewise, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety could experience an increase in workload for the investigation of nuisances, contingent upon the number of requests made the Attorney General, district attorneys, counties, or municipalities (G.S. 19-2.1). In addition, some additional processing and enforcement costs could be incurred by the Department of Justice and Crime Control, should local law enforcement request (G.S. 14-86.1(a)) that either take custody of forfeited conveyances. Furthermore, local law enforcement could also incur some additional processing and enforcement costs.

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

TECHNICAL CONSIDERATIONS: None

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DATE: May 7, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE JUDICIARY I COMMITTEE
(Civil)

June 12, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Tuesday, June 12 in Room 1027 of the Legislative Building. s present were Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Vice Chair R. C. Soles, Members Senators Charlie Albertson, Julia Boseman, Andrew Brock, Harry Brown, Pete Brunstetter, Janet Cowell, Malcolm Graham, David Hoyle, Ellie Kinnaird, Vernon Malone, Floyd McKissick, Tony Rand, Richard Stevens and Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:13 calling on Representative Insko to discuss House Bill 824, a bill asking to improve the gender equity reporting statutes. The bill, she said, was requested by the Secretary of State and clerks of court across North Carolina. Current law requires that certain boards and commissions must report a gender breakdown of its members. This bill would narrows the number of board and commissions clerks would have to report and gives specific dates. A Proposed Committee Substitute was passed to members and approved for discussion by a motion made by Sen. Clodfelter.

Chairman Nesbitt asked staff what changes were made in the PCS, but because the attorney assisting the bill was in another meeting, the bill was displaced until that attorney, Mr. Bill Gilkeson, returned to the meeting.

Representative Hill was recognized by Chairman Nesbitt for House Bill 590, a bill limiting liability at agricultural fairs. Representative Hill told the Committee that the bill is a sister bill to Senate Bill 717, introduced by Sen. Albertson. Representative Hill continued saying that this bill extended to county fair and that he did not know of any opposition. Chairman Nesbitt then asked staff to explain the bill. Staff Attorney Erika Churchill explained to the Committee that the State provides limited liability to agribusiness professionals at "agri-tourism" events. This bill, Ms. Churchill continued, would extend the definition of "agri-tourism to any fair in North Carolina licensed by the Commission of Agriculture. Conditions for an agribusiness professional after an incident causing injury or death include that it must be posted that the professional is not liable, that the professional did not act in such a way as to cause injury or death and that the profession had not the intention to create a dangerous situation. Chairman Nesbitt then replied that the liability was "very limited" which Ms. Churchill agreed it was.

Sen. Albertson said it was animal exhibits are an important part of fairs, allowing children to see animals. He then moved for favorable report. Chairman Nesbitt called for discussion among Committee member and then of the audience. Having no discussion, the Committee unanimously gave the bill a favorable report.

Attorney Gilkeson returned to the meeting and Chairman Nesbitt retuned to House Bill 824 and recognized Mr. Gilkeson. Asking what changes the bill makes to the existing statute, Mr. Gilkeson explained that the bill made technical changes to current legislation, noting that changes are made in the kind of boards that are subject to the gender reporting equity rule. The bill requires the Secretary of State to come up with a list of boards requiring gender reporting, and directs the Secretary to make a composite report for the governor and other interested officials. Chairman Nesbitt asked if the Secretary was in favor of the bill. Representative Insko replied that the Secretary requested the bill.

Chairman Nesbitt noted that the bill clarifies what board must be reported. Sen. Brunstetter asked if the bill adds more boards to report. Representative Insko replied that the bill reduces the number of boards. Sen. Albertson moved for favorable report. The motion passed and Chairman Nesbitt asked Sen. Kinnaird if she planned to handle the bill on the senate floor.

The Chairman then called on Sen. Graham and Representative Tillis for House bill 1354 and Senate Bill 1357, the motor vehicle chop shop act. A Proposed Committee Substitute was passed to members and was adopted for consideration unanimously through a motion by Sen. Graham.

Staff attorney Bill Gilkeson said the new Proposed Committee Substitute takes the criminal statute of liability and moves it from Chapter 20 in the original bill to Chapter 14 of the Proposed Committee Substitute. The Proposed Committee Substitute also was without parts involving restitution as was in the original bill, as it was determined that restitution was available already. Chairman Nesbitt questioned this and Mr. Gilkeson answered that it was already included. Another change noted involved forfeiture and seizure of property, amending a section reading that two prior convictions were needed to seize the property. Chairman Nesbitt questioned this again and said he did not feel the appropriate changes had been made.

Mr. Gilkeson also explained that having a Class H felony charge under this act allows prosecutors to better prosecute a chop shop owner and that although crimes similar to those committed in a chop shop carry existing punishments, such as auto theft, allowing an accused to be prosecuted thought the proposed bill would "close gaps" in current legislation.

Chairman Nesbitt said that neither he nor Senator Rand were pleased with certain language of the bill, particularly regarding forfeiture and prior arrests. As discussion continued Chairman Nesbitt asked that an amendment be drawn changing language on Page 4 Line 8 of the bill to read "In the case of the two prior convictions of G. S. 14-72.7, the convictions shall not arise out of same 'arrest or occurrence.'" The amendment was sponsored by Senator Rand.

As the amendment was being drafted Representative Tillis told the committee that the request for the bill came from officials in Mecklenburg County, and that the bill was

supported by law enforcement and the insurance industry. Chairman Nesbitt asked if there were any civil remedies. Mr. Gilkeson said there was not in the bill. Senator Tillman asked if law enforcement was happy with how the bill read. Representative Tillis said law enforcement volunteered to speak today. Chairman Nesbitt then called the committee to vote on the proposed amendment. The bill was amended through unanimous vote.

Senator Rand commented that on page 1 lines 12 and 13 reads that a person guilty of the chop shop offense included persons who may deliver parts to the shop.

Chairman Nesbitt recognized Senator Clodfelter who said he too had problems with the bill, and noted that the chop shop in the bill is not defined as the business but rather the building where the chop shop is going on. Once you say the building is the chop shop, he continued, you get into problems. For example, you may knowingly own a building but lease it to a chop shop, that would make you a violator of the bill.

After Senator Clodfelter's comments, Chairman Nesbitt pulled the bill and appointed a subcommittee consisting of Senators Clodfelter, Graham, Stevens and Rand.

Chairman Nesbitt then recognized Senator Rand to explain Senate Bill 1214, a bill amending interstate adult offenders. Senator Rand then explained that under current law there is an interstate compact moving offenders back and forth. Recommended by the board overseeing the compact, the bill changes the title of the bill, and adds three members to counsel, appoints the commissioner as a member of the council and makes the commissioner the chair. The governor appoints the commissioner. A $150 fee is made for any transfer requests and also says that the commission can be waived in North Carolina. Lastly, the bill says that if you are arrested on an interstate warrant you are not allowed bail.

A Proposed Committee Substitute was adopted for discussion unanimously by a motion made by Senator Rand. Chairman Nesbitt commented that all states participate and that the interstate compact formed in the late 1930s. Chairman Nesbitt asked Staff Attorney Kara McGraw for any additional comments. She added that the compact was one of the oldest in the nation. Senator Hoyle moved for favorable report.

After minimal discussing clarifying the bill, the bill received favorable report that passed unanimously and the bill is referred to the Senate Finance Committee. The meeting was adjourned at 10: 46 a.m.

Copies of Senate Bill 824 2nd Edition , a Proposed Committee Substitute for HB 824, a Bill Analysis for the PCS for HB 824, House Bill 590 -2nd Edition, a Bill Analysis for HB 590, Senate Bill 1214, a Proposed Committee Substitute for SB 1214, a Bill Analysis for the PCS for SB 1214, the 2nd Edition of House Bill 1354, a Proposed Committee Substitute for HB 1354, a Bill Analysis for the PCS for the 2nd Edition o f HB 1354, the Rand Amendment to HB 1354, a Legislative Incarceration Fiscal Note for the 2nd Edition

of HB 1354, and Senate Bill 1357 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

Attachment 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 824
Committee Substitute Favorable 5/22/07

Short Title: Improve Gender Equity Reporting Statute.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENDER EQUITY REPORTING STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-157.1 reads as rewritten:

"**§ 143-157.1. Reports on gender-proportionate appointments to statutorily created decision-making regulatory bodies.**

(a) Appointments. – In appointing members to any statutorily created decision-making or regulatory board, commission, council, or committee of the State, the appointing authority should select, from among the most qualified persons, those persons whose appointment would promote membership on the board, commission, council, or committee that accurately reflects the proportion that each gender represents in the population of the State as a whole or, in the case of a local board, commission, council, or committee, in the population of the area represented by the board, commission, council, or committee, as determined pursuant to the most recent federal decennial census, unless the law regulating such appointment requires otherwise. If there are multiple appointing authorities for the board, commission, council, or committee, they may consult with each other to accomplish the purposes of this section.

(b) Reports generally. – ~~Except as provided at the end of this section, each~~ Each appointing authority described in subsection (a) shall submit a report to the Secretary of State annually ~~by December 1~~ which discloses the number of appointments made during the preceding year ~~from each gender~~ and the number of appointments of each gender made, expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee. ~~A copy of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.~~ In addition, each appointing authority shall designate a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant's gender and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant's identity or of any other information made confidential by law. ~~In those cases where a county or a city is the appointing authority, all the reports referred to above shall be filed with the clerk to the board of county commissioners or the city clerk whichever is applicable. Such reports shall be reported annually by December 1 to the governing boards of the respective county or city and to the Secretary of State.~~ The Secretary of State shall prescribe the form used to report these appointments and may accept these reports by electronic means. Reports by appointing authorities shall be due in the Department of the Secretary of State on or before September 1. From these reports, the Secretary of State shall generate an annual composite report that shall be published by December 1. Copies of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c) State Reporting. – Each State appointing authority that makes appointments to a statutorily created decision-making or regulatory board, commission, council, or committee, shall file a report with the Secretary of State as prescribed in subsection (b). The Secretary shall submit to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore by July 1 of each year the names of all State boards, commissions, councils, or committees that an appointing authority must report on pursuant to this section.

(d) Local Units of Government Reporting. – In those cases where a county or a city is the appointing authority, then the clerk of that body shall submit this information to the Secretary of State. Appointments to the following local, municipal, or county boards must be reported:

(1) City or county ABC board, or local board created pursuant to G.S. 18B-703.
(2) Adult Care Home Community Advisory Committee.
(3) Airport Authority.
(4) Community Child Protection Team or a Child Fatality Prevention Team.
(5) Civil Service Board or similarly named board established by local act.
(6) Community Relations Committee.
(7) Council of Governments.
(8) Criminal Justice Partnership Task Force.
(9) Emergency Planning Committee.
(10) Board of Equalization and Review.
(11) Local Board of Health.
(12) Hospital Authority.
(13) Housing Authority.
(14) Human Relations Commission.
(15) County Industrial Facilities and Pollution Control Financing Authority.
(16) Juvenile Crime Prevention Council.
(17) Library Board of Trustees.
(18) Community College Board of Trustees.
(19) Economic development commission.
(20) Area mental health, developmental disabilities, and substance abuse board.
(21) Adult care home community advisory committee.
(22) Local partnership for children.
(23) Planning Board.
(24) Recreation Board.
(25) County board of social services.
(26) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes, a regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(27) Local tourism development authority.
(28) Water and sewer authority.
(29) Workforce Development Board.
(30) Zoning Board of Adjustment.
(31) Planning and Zoning Board.
(32) Board of Adjustment.
(33) Historic Preservation Commission.
(34) Redevelopment Commission.
(35) City board of education (if appointive).
(36) Metropolitan Planning Organization.
(37) Rural Planning Organization."

SECTION 2. This act becomes effective July 1, 2007.

ensure that information describing each applicant's gender and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant's identity or of any other information made confidential by law. ~~In those cases where a county or a city is the appointing authority, all the reports referred to above shall be filed with the clerk to the board of county commissioners or the city clerk whichever is applicable. Such reports shall be reported annually by December 1 to the governing boards of the respective county or city and to the Secretary of State.~~ The Secretary of State shall prescribe the form used to report these appointments and may accept these reports by electronic means. Reports by appointing authorities shall be due in the Department of the Secretary of State on or before September 1. From these reports, the Secretary of State shall generate an annual composite report that shall be published by December 1. Copies of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c) State Reporting. – Each State appointing authority that makes appointments to a statutorily created public body, however denominated, except those having only advisory authority, shall file a report with the Secretary of State as prescribed in subsection (b) of this section. The Secretary shall submit to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore by July 1 of each year the names of all State bodies that an appointing authority must report on pursuant to this section.

(d) Reporting by Local Units of Government. – In those cases where a county or a city is the appointing authority, the reporting required by subsection (b) of this section shall be submitted to the Secretary of State by the clerk of that appointing authority. Appointments to the following local, municipal, or county public bodies, or to public bodies however denominated that have the functions of the following public bodies, must be reported:

(1) City or county ABC board, or local board created pursuant to G.S. 18B-703.
(2) Adult Care Home Community Advisory Committee.
(3) Airport Authority.
(4) Community Child Protection Team or a Child Fatality Prevention Team.
(5) Civil Service Board or similarly named board established by local act.
(6) Community Relations Committee.
(7) Council of Governments.
(8) Criminal Justice Partnership Task Force.
(9) Emergency Planning Committee.
(10) Board of Equalization and Review.
(11) Local Board of Health.
(12) Hospital Authority.
(13) Housing Authority.
(14) Human Relations Commission.
(15) County Industrial Facilities and Pollution Control Financing Authority.

(16) Juvenile Crime Prevention Council.
(17) Library Board of Trustees.
(18) Community College Board of Trustees.
(19) Economic development commission.
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(21) Adult care home community advisory committee.
(22) Local partnership for children.
(23) Planning Board.
(24) Recreation Board.
(25) County board of social services.
(26) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes, a regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(27) Local tourism development authority.
(28) Water and sewer authority.
(29) Workforce Development Board.
(30) Zoning Board of Adjustment.
(31) Planning and Zoning Board.
(32) Board of Adjustment.
(33) Historic Preservation Commission.
(34) Redevelopment Commission.
(35) City board of education (if appointive).
(36) Metropolitan Planning Organization.
(37) Rural Planning Organization."

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

HOUSE BILL 824:
Improve Gender Equity Reporting Statute.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 31, 2007
Introduced by:	Rep. Insko	**Summary by:**	William R. Gilkeson
Version:	PCS for Second Edition H824-CSRR-24		Committee Co-Counsel

SUMMARY: *The ~~Second Edition~~ PCS for House Bill 824 amends the gender equity reporting statute by changing the date that State and local agencies must report from December 1 to September 1 and by specifying which local boards must be the subject of the reports.*

CURRENT LAW: Currently, GS 143-157.1 states every appointing authority **should** appoint to any State and local statutorily created decision-making or regulatory board a group a members that reflects the proportion in the area the board represents by gender. The "should" language stops short of a requirement, but appointing authorities are required to report. They must report the gender composition of the boards to which they make appointments to the Secretary of State each year by December 1. The Secretary of State is required to forward copies of the reports to the Governor, the Speaker of the House, and the President Pro Tem of the Senate.

BILL ANALYSIS: The PCS rewrites G.S. 143-157.1 to make several changes to the reporting aspect of the statute:

- Rather than say that the boards subject to reporting are those that are "statutorily created decision-making or regulatory," the PCS gets more specific. The State bodies subject to reporting are any that are statutorily created except those with only advisory authority. It directs the Secretary of State to come up with a list of such bodies by July 1 of each year and send the list to the Governor, the Speaker, and the President Pro Tem. The local bodies subject to reporting are specifically listed in the statute.
- Rather than direct the Secretary of State to send copies of all the reports to the Governor, the Speaker, and the President Pro Tem, the PCS directs her to make a composite report by December 1 and send that to the 3 officials.
- The PCS moves the date for reporting to the Secretary of State from December 1 to September 1.

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

BACKGROUND: The bill was requested by the Secretary of State, whose office has apparently noticed confusion as to which boards are subject to reporting.

H0824e2-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 590*
Committee Substitute Favorable 3/26/07

Short Title: Limit Liability at Agricultural Fairs.-AB (Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF ANIMAL EXHIBITIONS AT AGRICULTURAL FAIRS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 99E-30(1) reads as rewritten:

"(1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. "Agritourism activity" includes an activity involving any animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3."

SECTION 2. This act is effective when it becomes law and applies to causes of action arising on or after that date.

HOUSE BILL 590:
Limit Liability at Agricultural Fairs.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 11, 2007
Introduced by:	Rep. Hill	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 590 would limit the liability of operators of agricultural fairs for activities involving animal exhibitions at an agricultural fair licensed by the Commissioner of Agriculture.

[As introduced, this bill was identical to S717, as introduced by Sen. Albertson, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW:

Article 4 of Chapter 99E of the General Statutes provides a limitation on liability for agritourism professionals engaged in the business of providing agritourism activities. Agritourism activities are defined as any activity on a farm or ranch that allows the general public, for recreational, educational or entertainment purposes, to view or enjoy rural activities including farming, ranching, historic attractions/activities, pick your own activities and others.

If a warning is posted, consistent with the requirements of the Article, an agritourism professional will not be held liable for the injury or death of a participant resulting from the inherent risks of participating in agritourism activities. A copy of the warning is printed on the reverse of this summary.

The limitation on liability does not apply if the agritourism professional does either of the following:

1. Acts negligently or with willful or wanton disregard for the safety of the participant and that act is the proximate cause of the injury
2. Knew or should have known of any of the following and did not make that danger known to the participant :
    a. A dangerous condition on the land, facilities or equipment used in the activity.
    b. The dangerous propensity of a particular animal.

G.S. 106-520.3 authorizes the Commissioner of Agriculture, with the advice and approval of the Board of Agriculture, to make rules regarding the classification, operation, and licensing of fairs. "Fairs" are defined to mean bona fide exhibitions designed, arranged, and operated to promote agriculture, horticulture, livestock, poultry, dairy, mechanical fabrics, domestic economy, 4H, and FFA activities, by offering premiums and awards for exhibits.

BILL ANALYSIS: The proposed committee substitute expands the definition of agritourism activity to include any activity involving an animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture under G.S. 106-520.3.

EFFECTIVE DATE: Effective when it becomes law, and applies to causes of action arising on or after that date.

"**WARNING**

Under North Carolina law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

H0590e2-SMST

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S

SENATE BILL 1214

unfavorable original, favorable PCS

Short Title:	Amend Interstate Compact/Adult Offenders.-AB	(Public)
Sponsors:	Senators Rand; and Berger of Rockingham.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4B of Chapter 148 of the General Statutes reads as rewritten:

"Article 4B.

"Interstate Compact for ~~the Supervision of Adult Offenders.~~ Adult Offender Supervision.

"**§ 148-65.4. Short title.**

This Article may be cited as "The Interstate Compact for ~~the Supervision of Adult Offenders~~Adult Offender Supervision".

"**§ 148-65.5. Governor to execute compact; form of compact.**

The Governor of North Carolina is authorized and directed to execute a compact on behalf of the State of North Carolina with any state of the United States legally joining therein in the form substantially as follows:

Preamble.

Whereas: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states, and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. The Governor is hereby authorized and directed to enter into a compact on behalf of the State of North Carolina with any state of the United States and other territorial possessions of the United States legally joining therein in the form substantially as follows;

Whereas: Upon the adoption of this Interstate Compact for ~~the Supervision of Adult Offenders,~~ Adult Offender Supervision, it is the intention of the General Assembly to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers one year after the effective date of this compact.

...

Article IV.
The State Council.

(a) Each member state shall create a State Council for Interstate Adult Offender ~~Supervision that shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state.~~ Supervision. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the Compact Administrator, who shall be appointed by the ~~state council or by the Governor in consultation with the legislature and the judiciary.~~ Secretary of Correction. In addition to appointment of its own commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy operations and procedures of the compact within that state.

...

"**§ 148-65.6. Implementation of the compact.**

(a) The North Carolina State Council for Interstate Adult Offender Supervision shall be established, consisting of ~~11~~ 14 members. ~~The Secretary of Correction, or the Secretary's designee, shall serve as the Compact Administrator for the State of North Carolina and as North Carolina's Commissioner to the Interstate Compact Commission.~~

~~The Secretary of Correction, or the Secretary's designee, is a member of the State Council and serves as chairperson of the State Council.~~ North Carolina's Commissioner to the Interstate Compact Commission is a member of the State Council and serves as chair of the State Council. The remaining members of the State Council shall consist of the following:

(1) One member representing the executive branch, to be appointed by the Governor;

(2) One member from a victim's assistance group, to be appointed by the Governor;

(3) One at-large member, to be appointed by the Governor;

(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;

(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(6) A superior court judge, to be appointed by the Chief Justice of the Supreme Court; ~~and~~

(6a) A district court judge, to be appointed by the Chief Justice of the Supreme Court;

(7) Four members representing the Division of Community Corrections, to be appointed by the Director of the Division of Community ~~Corrections.~~Corrections;

(8) A district attorney, to be appointed by the Governor; and

(9) A sheriff, to be appointed by the Governor.

(a1) The Secretary of Correction, or the Secretary's designee, shall serve as North Carolina's Commissioner to the Interstate Compact Commission. The Secretary of Correction shall appoint the compact administrator.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of Correction concerning this State's participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective, and, except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the compact.

"**§ 148-65.7. ~~Supervision fee.~~ Fees.**

(a) Persons convicted in this State who make a request for transfer to another state pursuant to the compact shall pay a transfer application of one hundred fifty dollars

($150.00) for each transfer application submitted. The transfer application fee shall be paid to the Compact Commissioner upon submission of the transfer application. The Commissioner or the Compact Administrator may waive the application fee if either the Commissioner or the Compact Administrator finds that payment of the fee will constitute an undue economic burden on the offender.

All fees collected pursuant to this section shall be deposited in the Interstate Compact Fund and shall be used only to support administration of the Interstate Compact.

The Interstate Compact Fund is established within the Department of Correction as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert, and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Department of Correction pursuant to this subsection shall be remitted to the State Treasurer to be deposited and held in this Fund. Moneys in the fund shall be used to supplement funds otherwise available to the Department of Correction for the administration of the compact.

(b) Persons supervised in this State pursuant to this compact shall pay the supervision fee specified in G.S. 15A-1374(c). The fee shall be paid to the clerk of court in the county in which the person initially receives supervision services in this State. The Commissioner or the Compact Administrator may waive the fee if either the Commissioner or the Compact Administrator finds that payment of the fee will constitute an undue economic burden on the offender.

"§ 148-65.8. Interstate parole and probation hearing procedures.

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for the ~~Supervision of Adult Offenders,~~ Adult Offender Supervision, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. ~~The appropriate officer or officers of this State shall, as soon as practicable following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state.~~ Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the offender involved for a period not to exceed 15 days prior to the ~~hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.~~ hearing. The offender shall not be entitled to bail pending the hearing.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for ~~the Supervision of Adult Offenders,~~ Adult Offender Supervision, a deputy of the Administrator, any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole,

probation, or post-release supervision violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the offender:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that the offender has committed a violation that may lead to a revocation of parole, probation, or post-release supervision.

(2) Shall be permitted to advise with any persons whose assistance the offender reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against the offender, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the offender's contentions. ~~A record of the proceedings shall be made and preserved.~~

(c1) A record of the hearing shall be made and preserved. As soon as practicable following termination of any hearing conducted pursuant to this section or the waiver of such hearing, the appropriate officer or officers of this State shall report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. If the sending state provides notice that it intends to retake or reincarcerate the offender, the offender shall remain in custody for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for the ~~Supervision of Adult Offenders,~~ Adult Offender Supervision, any appropriate judicial or administrative officer or agency in another state may hold a hearing on the alleged violation. Upon receipt of the record of a parole, probation, or post-release supervision violation hearing held in another state pursuant to a statute substantially similar to this section, that record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

"**§ 148-65.9. North Carolina sentence to be served in another jurisdiction.**

The Post-Release Supervision and Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another state or federal institution and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of the individual's North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison

department of this State, in the discretion of the Post-Release Supervision and Parole Commission."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1214
PROPOSED COMMITTEE SUBSTITUTE S1214-CSTC-36 [v.5]

6/11/2007 11:15:16 AM

Short Title: Amend Interstate Compact/Adult Offenders.-AB (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4B of Chapter 148 of the General Statutes reads as rewritten:

"Article 4B.

"Interstate Compact for ~~the Supervision of Adult Offenders.~~ Adult Offender Supervision.

"**§ 148-65.4. Short title.**

This Article may be cited as "The Interstate Compact for ~~the Supervision of Adult Offenders~~Adult Offender Supervision".

"**§ 148-65.5. Governor to execute compact; form of compact.**

The Governor of North Carolina is authorized and directed to execute a compact on behalf of the State of North Carolina with any state of the United States legally joining therein in the form substantially as follows:

Preamble.

Whereas: The Interstate Compact for the Supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states, and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include

currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. The Governor is hereby authorized and directed to enter into a compact on behalf of the State of North Carolina with any state of the United States and other territorial possessions of the United States legally joining therein in the form substantially as follows;

Whereas: Upon the adoption of this Interstate Compact for ~~the Supervision of Adult Offenders,~~ Adult Offender Supervision, it is the intention of the General Assembly to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers one year after the effective date of this compact.

...

Article IV.
The State Council.

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision that shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the Compact Administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary. In addition to appointment of its own commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy operations and procedures of the compact within that state.

...

"**§ 148-65.6. Implementation of the compact.**

(a) The North Carolina State Council for Interstate Adult Offender Supervision shall be established, consisting of ~~11~~ 14 members. ~~The Secretary of Correction, or the Secretary's designee, shall serve as the Compact Administrator for the State of North~~

~~Carolina and as North Carolina's Commissioner to the Interstate Compact Commission. The Secretary of Correction, or the Secretary's designee, is a member of the State Council and serves as chairperson of the State Council.~~ North Carolina's Commissioner to the Interstate Compact Commission is a member of the State Council and serves as chair of the State Council. The remaining members of the State Council shall consist of the following:

(1) One member representing the executive branch, to be appointed by the Governor;

(2) One member from a victim's assistance group, to be appointed by the Governor;

(3) One at-large member, to be appointed by the Governor;

(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;

(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(6) A superior court judge, to be appointed by the Chief Justice of the Supreme Court; ~~and~~

(6a) A district court judge, to be appointed by the Chief Justice of the Supreme Court;

(7) Four members representing the Division of Community Corrections, to be appointed by the Director of the Division of Community ~~Corrections.~~Corrections;

(8) A district attorney, to be appointed by the Governor; and

(9) A sheriff, to be appointed by the Governor.

(a1) The Governor, in consultation with the legislature and judiciary, shall appoint the Compact Administrator. The Compact Administrator shall be appointed by the State Council as North Carolina's Commissioner to the Interstate Compact Commission.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of Correction concerning this State's participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the compact at the time that it becomes effective, and, except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the compact.

"**§ 148-65.7. ~~Supervision fee.~~ Fees.**

(a) Persons convicted in this State who make a request for transfer to another state pursuant to the compact shall pay a transfer application of one hundred fifty dollars ($150.00) for each transfer application submitted. The transfer application fee shall be paid to the Compact Commissioner upon submission of the transfer application. The Commissioner or the Commissioner's designee may waive the application fee if either the Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender.

All fees collected pursuant to this section shall be deposited in the Interstate Compact Fund and shall be used only to support administration of the Interstate Compact.

The Interstate Compact Fund is established within the Department of Correction as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert, and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Department of Correction pursuant to this subsection shall be remitted to the State Treasurer to be deposited and held in this Fund. Moneys in the fund shall be used to supplement funds otherwise available to the Department of Correction for the administration of the Interstate Compact.

(b) Persons supervised in this State pursuant to this compact shall pay the supervision fee specified in G.S. 15A-1374(c). The fee shall be paid to the clerk of court in the county in which the person initially receives supervision services in this State. The Commissioner or the Commissioner's designee may waive the fee if either the Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender.

"**§ 148-65.8. Interstate parole and probation hearing procedures.**

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for ~~the Supervision of Adult Offenders,~~ Adult Offender Supervision, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. ~~The appropriate officer or officers of this State shall, as soon as practicable following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state.~~ Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the offender involved for a period not to exceed 15 days prior to the ~~hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.~~ hearing. The offender shall not be entitled to bail pending the hearing.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for ~~the Supervision of Adult Offenders,~~ Adult Offender Supervision,

a deputy of the Administrator, any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole, probation, or post-release supervision violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the offender:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that the offender has committed a violation that may lead to a revocation of parole, probation, or post-release supervision.

(2) Shall be permitted to advise with any persons whose assistance the offender reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against the offender, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the offender's contentions. ~~A record of the proceedings shall be made and preserved.~~

(c1) A record of the hearing shall be made and preserved. As soon as practicable following termination of any hearing conducted pursuant to this section or the waiver of such hearing, the appropriate officer or officers of this State shall report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. If the hearing recommendation is to retake or reincarcerate the offender, the hearing officer or officers may detain the offender until notice is received from the sending state. If the sending state provides notice that it intends to retake or reincarcerate the offender, the offender shall remain in custody for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for ~~the Supervision of Adult Offenders,~~ Adult Offender Supervision, any appropriate judicial or administrative officer or agency in another state may hold a hearing on the alleged violation. Upon receipt of the record of a parole, probation, or post-release supervision violation hearing held in another state pursuant to a statute substantially similar to this section, that record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

"**§ 148-65.9. North Carolina sentence to be served in another jurisdiction.**

The Post-Release Supervision and Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another

state or federal institution and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of the individual's North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison department of this State, in the discretion of the Post-Release Supervision and Parole Commission."

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

SENATE BILL 1214:
Amend Interstate Compact/Adult Offenders.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 12, 2007
Introduced by:	Sen. Rand	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S1214-CSTC-36[v.5]		Committee Counsel

SUMMARY: ***Senate Bill 1214 would make technical corrections, expand the membership of the State Council, provide for appointment of the Compact Administrator and Commissioner in accord with the terms of the Compact, establish fees for in-state transfer applications, and modify procedures for hearings.***

The PCS for SB 1214 would make additional technical corrections and clarifications and remove all but technical changes from the Compact language.

CURRENT LAW: Article 4B of Chapter 148 established the Interstate Compact for the Supervision of Adult Offenders (ICSAO). The ICSAO provides for a joint compact among the states to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and return offenders to their originating jurisdictions when necessary.

The Compact creates a State Council responsible for appointing a Commissioner to serve on the Interstate Compact Commission for that state. The Compact requires that the State Council appoint as Commissioner the Compact Administrator from that state. Each state retains the right to determine the qualifications of the Compact Administrator, who is appointed by either the State Council or by the Governor in consultation with the legislature and the judiciary.

G.S. 148-65.6 provides for implementation of the Compact. The North Carolina State Council consists of 11 members:

- Secretary of Correction (or designee) – Chairperson.
- 1 executive branch representative, 1 member from a victim's assistance group, and 1 at-large member, all appointed by the Governor.
- 1 member of the Senate, appointed by the President Pro Tempore.
- 1 member of the House of Representatives, appointed by the Speaker of the House.
- 1 superior court judge, appointed by the Chief Judge of the Supreme Court.
- 4 members representing the Division of Community Corrections, appointed by the Director of the Division of Community Corrections.

The Secretary of Correction, or designee, serves as the Compact Administrator and North Carolina's Commissioner to the Interstate Compact Commission.

G.S. 148-65.7 provides for supervision fees as specified in G.S. 15A-1374(c). G.S. 15A-1374(c) establishes a monthly fee of thirty dollars ($30.00) for parolee supervision. The fee is payable to the clerk of superior court of the county in which the offender initially receives supervision services in the State.

G.S. 148-65.8 provides the procedures for interstate parole and probation hearings.

- When the appropriate authorities determine that consideration should be given to retaking or reincarceration for a parole, probation, or post-release supervision violation by an offender supervised under the ICSAO, the Compact Administrator of the sending state must be notified.
- Prior to notification, a hearing must be held within a reasonable time unless waived by the offender. As soon as practicable following the hearing, the appropriate officer must report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the offender's disposition by the sending state.

- Pending proceedings pursuant to this section, appropriate officers may take custody of and detain an offender for a period of not more than 15 days prior to the hearing. If it appears to the hearing officer that retaking or reincarceration is likely to follow, the offender may be detained for a reasonable period after the hearing or waiver as necessary for retaking or reincarceration.

BILL ANALYSIS: Senate Bill 1214 would make the following changes to Article 4B.

- Would make technical changes by correcting the title from "Interstate Compact for the Supervision of Adult Offenders" to "Interstate Compact for Adult Offender Supervision" throughout the Article.
- Would add 3 new members to the State Council in G.S. 148-65.6: 1) a district court judge to be appointed by the Chief Judge of the Supreme Court, 2) a district attorney, to be appointed by the Governor, and 3) a sheriff, to be appointed by the Governor.
- Would appoint the Commissioner as a member of the State Council in place of the Secretary of Correction, and would make the Commissioner the chair of the State Council. Would require the Governor to appoint the Compact Administrator in consultation with the legislature and judiciary, and would require the State Council to appoint the Compact Administrator as the Commissioner to the Interstate Compact Commission.
- Would add the following fees under G.S. 148-65.7. Persons convicted in NC who make a transfer request under the ICAOS would pay a transfer application fee of $150 for each transfer application submitted, payable to the Compact Commissioner. The Compact Commissioner may waive the fee if either the Commissioner or Commissioner's designee found the payment to be an undue economic burden on the offender. Fees would be deposited in the Interstate Compact Fund and used only in support of administration of the Interstate Compact.
- Would establish in G.S. 148-65.7 the Interstate Compact Fund within the Department of Correction as a nonreverting, interest-bearing special revenue account, used to supplement funds otherwise available to the Department of Corrections for administration of the Compact.
- Would allow the Commissioner or the Commissioner's designee to waive the fee for supervision in NC, which would remain at $30, if either felt that payment of the fee would constitute an undue economic burden on the offender.
- Would reorganize the procedures for interstate parole and probation hearings under G.S. 148-65.8 as follows.
    - Would eliminate the provisions under G.S. 148-65.8(a) regarding notice to other states and providing that the offender could be held for a reasonable period after the hearing or waiver of hearing as necessary if it appeared to hearing officers that retaking or reincarceration was likely.
    - Would add to subsection (a) the mandate that offenders are not entitled to bail pending hearings.
    - Would create a new subsection (c1) providing for recording of the hearing, notification to the sending state, and requiring that if the hearing recommendation was to retake or reincarcerate the offender, the hearing officer could detain the offender until notice was received from the sending state, and that if the sending state provided notice that it intended to retake or reincarcerate the offender, the offender must remain in custody after the hearing as necessary to arrange for the retaking.

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

BACKGROUND: The 1937 Interstate Compact for the Supervision of Parolees and Probationers was replaced by the member states with the Interstate Compact for Adult Offender Supervision, which North Carolina adopted in 2002. All 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands are members of the Compact.

S1214e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 1354*
Committee Substitute Favorable 5/2/07

Short Title: Motor Vehicle Chop Shop Act. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A MOTOR VEHICLE CHOP SHOP LAW REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF STOLEN OR ALTERED MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Motor Vehicle Chop Shop Act.

"**§ 20-400. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Article to the defined words and phrases and their cognates:

(1) Chop shop. – Any building, lot, or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to do either of the following:

a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part or to prevent the identification of the motor vehicle or motor vehicle part.

b. Sell or dispose of the motor vehicle or motor vehicle part.

(2) Instrumentality. – Motor vehicle, motor vehicle part, other conveyance, tool, implement, or other instrumentality.

(3) Vehicle identification number. – A number, a letter, a character, a datum, a derivative, or a combination thereof, used by the

manufacturer or the Division for the purpose of uniquely identifying a motor vehicle or motor vehicle part.

"**§ 20-401. Chop shop operation unlawful; restitution.**

(a) Criminal Penalties. – It shall be punishable as a Class H felony:

(1) For any person to own, operate, or conduct a chop shop.

(2) For any person to transport a motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop.

(3) For any person to sell, transfer, purchase, or receive a motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.

(4) For any person to buy, dispose of, sell, transfer, or possess a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed. The provisions of this subdivision shall not apply to a motor vehicle scrap processor who, in the normal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part before or during the processing.

(b) Restitution. – In addition to any other punishment provided for by law, any person who violates this section shall be ordered to make restitution to the lawful owner of any stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

Financial loss includes, but is not limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. Lawful owner includes an innocent bona fide purchaser for value of a stolen motor vehicle or stolen motor vehicle part who does not know that the motor vehicle or motor vehicle part is stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser for value who has subrogated the claim.

The court shall determine the amount and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In that case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution."

SECTION 2. G.S. 14-86.1(a) reads as rewritten:

"(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or used by any person in the commission of armed or common-law robbery, or used in violation of G.S. 20-401, or used by any person in the commission of any larceny when the value of the property taken is more than two thousand dollars ($2,000) shall be subject to forfeiture as provided herein, except that:

(1) No conveyance used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;

(2) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;

(3) No conveyance shall be forfeited pursuant to this section unless the violation involved is a felony;

(4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;

(5) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section;

(6) The trial judge in the criminal proceeding which may subject the conveyance to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner the procedures provided in subsection (e) shall apply.

As used in this section concerning a violation of G.S. 20-401, the term "conveyance" includes any "instrumentality" as defined in G.S. 20-400(2)."

SECTION 3. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place wherein or whereon are carried on, conducted, or permitted chop shop activities in violation of G.S. 20-401.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

SECTION 4. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, ~~or~~ two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior occurrences within five years of violation of G.S. 20-401, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued,

begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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HOUSE BILL 1354*
Committee Substitute Favorable 5/2/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1354-CSRR-26 [v.4]

6/12/2007 3:16:00 PM

Short Title: Motor Vehicle Chop Shop Act. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A MOTOR VEHICLE CHOP SHOP LAW REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF STOLEN OR ALTERED MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 14 of the General Statues is amended by adding a new section to read:

"**§ 14-72.7. Processing Stolen Motor Vehicle Parts.**

(a) A person is guilty of a Class H felony if that person knowingly engages in any of the following actions or activities:

(1) Altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or other illegal means.

(2) Permitting a building or other premises to be used for any activity prohibited by this section, where the person has legal possession of the premises, and knows that the premises are being used as a chop shop.

(3) Purchasing, disposing of, selling, transferring, or possessing a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle, or identification of the vehicle part, has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed.

(4) Selling, transferring, purchasing, or receiving a motor vehicle or motor vehicle part either to or from a chop shop.

The provisions of this subdivision (3) of this subsection shall not apply to a motor vehicle scrap processor who, in the normal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other

similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part before or during the processing.

(b) Definitions. — For the purposes of this section, the following definitions apply:

(1) Chop shop. – Any building, lot, or other premises where one or more persons are or have been knowingly engaged in any of the activities or actions prohibited by this section.

(2) Instrumentality. – Motor vehicle, motor vehicle part, other conveyance, tool, implement, or equipment possessed or used in the activities prohibited under this section.

(3) Vehicle identification number. – A number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer or the Division for the purpose of uniquely identifying a motor vehicle or motor vehicle part.

(c) Seizure and Forfeiture. – The instrumentalities possessed or used to engage in the activities prohibited under this section are subject to the seizure and forfeiture provisons of G.S. 14-86.1. The real property of a chop shop is subject to the abatement and forfeiture provisions of Chapter 19 of the General Statutes."

SECTION 2. G.S. 14-86.1(a) reads as rewritten:

"(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or used by any person in the commission of armed or common-law robbery, or used in violation of G.S. 14-72.7, or used by any person in the commission of any larceny when the value of the property taken is more than two thousand dollars ($2,000) shall be subject to forfeiture as provided herein, except that:

(1) No conveyance used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;

(2) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;

(3) No conveyance shall be forfeited pursuant to this section unless the violation involved is a felony;

(4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;

(5) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being

used in the commission of any violation that may subject the conveyance to forfeiture under this section;

(6) The trial judge in the criminal proceeding which may subject the conveyance to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner the procedures provided in subsection (e) shall apply.

As used in this section concerning a violation of G.S. 14-72.7, the term "conveyance" includes any "instrumentality" as defined in that section."

SECTION 3. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conducting, or engaging in any activities in violation of G.S. 14-72.7.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

SECTION 4. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, ~~or~~ two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the

two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest

from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 1354:
Motor Vehicle Chop Shop Act

BILL ANALYSIS

Committee: Senate Judiciary I (Civil) **Date:** June 4, 2007
Introduced by: Reps. Tillis, Saunders, R. Warren, Kiser **Summary by:** William R. Gilkeson
Version: PCS for Second Edition Committee Co-Counsel

SUMMARY: The ~~Second Edition of~~ PCS for House Bill 1354 provides specific criminal and civil penalties for operating a "chop shop," defined as a place where stolen vehicles are altered so as to make them unidentifiable or to sell them.

[As introduced, this bill was identical to S1357, as introduced by Sen. Graham, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: Currently, several criminal statutes address larceny of vehicles, possessing stolen vehicles, or receiving stolen vehicles, and altering vehicle identification numbers (VINs).

Offense	GS Citation	Misdemeanor?	Felony?
Larceny	14-72 and 14-72.2	Class 1 misdemeanor if $1,000 or less	Class H felony if more than $1,000
Possession of Stolen Property	14-72 and 14-71.1	Class 1 misdemeanor if $1,000 or less – 14-72	Class H felony if more than $1,000 – 14.71-1
Receiving Stolen Property	14-72 and 14-71	Class 1 misdemeanor if $1,000 or less – 14-72	Class H felony if more than $1,000 – 14-71
Possession of Stolen Vehicle	20-106		Class H felony, regardless of value, if vehicle is whole
Receiving Stolen Vehicle	20-106		Class H felony , regardless of value, if vehicle is whole.
Transferring Stolen Vehicle	20-106		Class H felony, regardless of value, if vehicle is whole.
Altering VIN number	20-109		Class I felony.
Altering Serial Number of Personal Property	14-160.1	Class 1 misdemeanor	

BILL ANALYSIS:

Chop Shop Defined. The bill adds a new statutory section to Article 16 of Chapter 14, the Larceny part of the Criminal Law, specifically dealing with chop shops. It defines a "chop shop" as any building, lot, or other premises where one or more people are or have been knowingly engaged in altering any vehicle or vehicle part known to have been stolen for the purpose either of making the vehicle unidentifiable or of selling them.

Crimes Related to a Chop Shop. The bill makes it a Class H felony (presumptive 5-6 months community/intermediate/active sentence)

1. Knowingly to own or operate a chop shop.
2. To transport a vehicle to or from a place knowing it to be a chop shop.
3. To sell or transfer or to buy or receive a vehicle or part to or from a place knowing it to be a chop shop.

4. To buy, sell, transfer, or possess a vehicle or part knowing that the VIN number has been altered. (Scrap dealers crushing vehicles are exempted.)

Forfeiture. The bill amends the following current statutes to include chop shop operations as justification for seizure and forfeiture of property:

- G.S. 14-86.1 – forfeiture of vehicles, parts, and instrumentalities.
- Chapter 19 (Nuisances) – forfeiture of real property. The addition of the chop shop provisions to this chapter also allows the use of this Chapter's procedures to abate the nuisance.

EFFECTIVE DATE: December 1, 2007.

BACKGROUND: The bill is patterned after a law in South Carolina.

H1354e2-SMRR

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 12

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1354 DATE 6/12/07

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

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) RAND

1 moves to amend the bill on page 4, line 8
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4
5 "transaction or occurrence."
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SIGNED Tay Rand

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1354 (Second Edition)

SHORT TITLE: Motor Vehicle Chop Shop Act.

SPONSOR(S): Representatives Kiser, Saunders, R. Warren, and Tillis

FISCAL IMPACT

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

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
GENERAL FUND					
Correction	**Possible significant fiscal impact; amount cannot be determined. See pp. 2-4**				
Judicial	**Possible significant fiscal impact; amount cannot be determined. See p. 5-6**				
DOJ	**No significant impact is assumed.**				
CCPS	**No significant impact is assumed.**				
Law Enforcement	**No significant impact is assumed.**				
TOTAL EXPENDITURES:	**Amount cannot be determined.**				
ADDITIONAL PRISON BEDS: (cumulative)*	**Some expected increase in bed needs; however, the prison population impact is indeterminate.**				
POSITIONS: (cumulative)	**Amount cannot be determined.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Justice; Department of Crime Control and Public Safety; Local law enforcement.

EFFECTIVE DATE: December 1, 2007.

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

BILL SUMMARY: Section 1 of H.B. 1354 enacts new Article 18 of G.S. Chapter 20, entitled the "Motor Vehicle Chop Shop Act."

- New G.S. 20-400 defines a "chop shop" as any premises where a person is "knowingly engaged in altering, destroying, disassembling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud..." with the intent to misrepresent the vehicle or part, or to sell/dispose of the vehicle or part.
- New G.S. 20-401(a) creates four new Class H felony offenses for any person to:
  - 1) own, operate, or conduct a chop shop;
  - 2) transport a motor vehicle or part to or from a known chop shop;
  - 3) sell, transfer, purchase, or receive a motor vehicle or part to or from a known chop shop; and
  - 4) buy, dispose of, sell, transfer, or possess a motor vehicle or part, knowing the vehicle identification number of the vehicle or part has been altered or counterfeited (offense does not apply to motor vehicle scrap processors acting in good faith during normal business).

  G.S. 20-401(b) requires an offender to make restitution to the lawful owner of the stolen property or to the owner's insurer, and to any other person for financial loss sustained.

Section 2 amends G.S. 14-86.1(a) to provide for the forfeiture of any conveyance used to violate new G.S. 20-401. Specifies that the term "conveyance" includes any "instrumentality" as defined in new G.S. 20-400(2) – "motor vehicle, part, other conveyance, tool, implement or other instrumentality."

Section 3 amends G.S. 19-1 to add new subsection (b2), including as a nuisance the building, use, ownership, etc. of a place for violation of G.S. 20-401.

Section 4 amends G.S. 19-6.1 to provide for the forfeiture of real property in nuisance abatement actions, where the nuisance consists of, or includes, two prior occurrences of violation of G.S. 20-401 within five years.

Section 5 provides for the severability of the Act.

Section 6 provides that the Act becomes effective December 1, 2007 and applies to offenses committed on or after that date.

Source: Adapted from Bill Digest H.B. 1354 (04/05/0200).

ASSUMPTIONS AND METHODOLOGY:

As defined in new G.S. 20-400 for the purposes of the Act, the term "chop shop" includes a wide range of proscribed actions concerning motor vehicles and their parts. This breadth of definition and range of prohibited acts (G.S. 20-401) encompass elements of several existing offenses.[1] However, it is not known how prosecution of these existing offenses might change under this bill, or how many violations might occur for the proposed offenses. Nor is it known how many "chop shops" currently exist within the state.

Although the relatively high charge and conviction frequencies for similar, existing offenses indicate that this proposal *could* have a significant fiscal impact, the extent of such impact is

[1] North Carolina Sentencing and Policy Advisory Commission.

indeterminate at this time. Nevertheless, based on current resources, Fiscal Research expects that any resultant charge and/or conviction for the new offenses, or resultant abatement action, will generate some additional fiscal impact.

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission analyzes each bill that proposes or alters a criminal penalty, and assesses its impact on the projected prison population (relative to SPAC annual population projections). The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

As previously noted, the offenses created by proposed G.S. 20-401 encompass elements of several existing offenses. However, due to imperfect matches between these elements, the Sentencing Commission cannot estimate how many existing convictions might instead become eligible for conviction under H.B. 1354, or how many new convictions might occur. A general discussion of each proposed offense, and its potential impact on the prison population is included below.

1. "Own, operate, or conduct a chop shop."

Though the offense of owning, operating, or conducting a chop shop requires the additional element of maintaining a physical location constituting a chop shop ("...any building, lot, or other premises..."), persons eligible for conviction of this offense also include an unknown portion of those who could be convicted of the following offenses. It is not known how many of the convictions in the table below may instead be convicted as Class H felonies under the proposed bill, or how sentencing practices may differ for the proposed offenses.

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-160	Injury to personal property	2,1	2,175
G.S. 14-71.1	Possession of stolen goods (F)	H	713
G.S. 14-71.1	Possession of stolen goods (M)	1	2,080
G.S. 20-106	Possess stolen motor vehicle	H	355
G.S. 20-107	Tampering with vehicle	2	1
G.S. 20-107(a)	Tampering with vehicle parts	2	0

2. "Transport a motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop."

Those eligible for conviction of transporting a motor vehicle to a chop shop include an unknown portion of those convicted for possessing a stolen motor vehicle (Class H felony) under G.S. 20-106. In FY 2005/06, there were 355 convictions for possession of a stolen motor vehicle. It is probable that conviction for this proposed offense would occur in addition to conviction for larceny of a motor vehicle, if a theft involves delivery of the stolen vehicle to a chop shop. In FY 2005/06, there were 339 convictions for felony larceny of a motor vehicle (Class H) and 19

convictions for misdemeanor larceny of a motor vehicle (Class 1). In addition, there were 826 convictions for felony larceny, but it is not known whether any of these convictions were for larceny of a motor vehicle. Consequently, some additional prison bed impact is likely to occur as a result of consecutive sentencing. However, it is not known how many offenses would be affected.

Moreover, those eligible for conviction of transporting a motor vehicle part to a chop shop include an unknown portion of those currently convicted of the following offenses. It is not known how many of the convictions in the table below may instead be convicted as Class H felonies under the proposed bill, or how sentencing practices may differ for the proposed offenses.

G.S.	Offense	Offense Class	FY 2005/06 Convictions
G.S. 14-71	Receiving stolen goods (M)	1	28
G.S. 14-71	Receiving stolen goods (F)	H	7
G.S. 20-106	Possess stolen motor vehicle	H	355

3. "Sell, transfer, purchase, or receive a motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop."

Those eligible for conviction of "trading" a motor vehicle or motor vehicle part also include an unknown portion of those currently convicted of the offenses in the above table. It is not known how many of these convictions may instead be convicted as Class H felonies under the proposed bill, or how sentencing practices may differ for the proposed offenses.

4. "Buy, dispose of, sell, transfer, or possess a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered..."

According to the Sentencing Commission, this is a new offense with unique elements. Thus, there is no historical data from which to estimate its impact. It is not known how many violations might occur.

As implied, the potential impact on the state prison population would be driven by: 1) existing misdemeanor offenses being prosecuted as Class H felony offenses, and resulting in active sentences;[2] 2) separate convictions and active sentences occurring for the proposed Class H felony offenses, in addition to convictions for existing offenses – resulting in consecutive active sentences; and 3) new Class H felony convictions and active sentences for these new offenses, apart from any association to an existing offense. Accordingly, FRD expects that any combination of these effects would increase prison bed demand, requiring the construction of additional beds.

In FY 2005/06, 34% of all Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months. Although the potential impact on the prison population is indeterminate, assuming that at least three Class H convictions occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first*

[2] Misdemeanor active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties $18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

applicable year; two additional beds in the second year; and one new employee in the second year.

Assuming these thresholds and inmate assignment to medium custody, the construction of two additional prison beds within a new, stand alone facility could cost the State $136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately $84,240.[3] These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total $58,196 by FY 2009-10.[4]

Department of Correction – Division of Community Corrections

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. Thus, *assuming that future convictions for the proposed offense occur, the Division of Community Corrections could assume some additional costs for offenders placed under its supervision.* It is not known how non-active sentencing practices might differ for the proposed offenses (e.g. how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long).

General supervision of intermediate and community offenders by a probation officer costs $1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction is much higher, ranging from $7.71 to $14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated $14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

It is not known how many additional criminal charges or abatement actions might occur, or how prosecution tactics would differ in response to the proposed offenses. Accordingly, the potential fiscal impact on the Courts is indeterminate.

Nonetheless, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. The table below illustrates the potential difference in estimated costs for criminal cases, by trial and guilty plea, assuming that some existing misdemeanor offenses are instead prosecuted as felonies under this proposal. Effectively enhancing the penalties from Classes 1 or 2 misdemeanors to Class H felonies will elevate future cases to superior court, rather than district court. This elevation will

[3] New, "stand alone" institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

"Add-on" facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody "add-on" is built adjacent to an existing perimeter. "Add-on" facilities employ the same EOC custody configurations as "stand alone" (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

[4] Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

increase jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08				
Offense Class	*Trial*	*Plea*	*Change in Cost: Trial**	*Change in Cost: Plea**
Class 2 Misdemeanor	$2,770	$230	$4,575	$95
Class 1 Misdemeanor	$3,702	$243	$3,643	$82
Class H Felony	$7,345	$325	N/A	N/A
** Change in cost, relative to prosecution at Class H felony level.*				

Similarly, although it is not known how many civil abatement actions might occur, any additional case brought by the Attorney General, any district attorney, or any aggrieved party against persons violating G.S. 20-401 is expected to increase superior court workload.

Law Enforcement: Department of Justice; Crime Control and Public Safety; and Local Government

Current G.S. 19-2.1 authorizes the Attorney General to bring a civil action for nuisance abatement. Accordingly, some slight increase in workload could be incurred for actions brought against alleged chop shops. Likewise, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety could experience an increase in workload for the investigation of nuisances, contingent upon the number of requests made the Attorney General, district attorneys, counties, or municipalities (G.S. 19-2.1). In addition, some additional processing and enforcement costs could be incurred by the Department of Justice and Crime Control, should local law enforcement request (G.S. 14-86.1(a)) that either take custody of forfeited conveyances. Furthermore, local law enforcement could also incur some additional processing and enforcement costs.

SOURCES OF DATA: 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: Bryce Ball and Jean Sandaire

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 7, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1357*

Short Title:	Motor Vehicle Chop Shop Act.	(Public)
Sponsors:	Senators Graham; Clodfelter and Dannelly.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A UNIFORM MOTOR VEHICLE CHOP SHOP LAW REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF STOLEN OR ALTERED MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Motor Vehicle Chop Shop, Stolen, And Altered Property Act.

"**§ 20-400. Short title.**

This act may be cited as the "Motor Vehicle Chop Shop Act."

"**§ 20-401. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Article to the defined words and phrases and their cognates:

(1) Chop shop. – Any building, lot, or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order either to:

a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part or to prevent the identification of the motor vehicle or motor vehicle part or

b. Sell or dispose of the motor vehicle or motor vehicle part.

(2) Unidentifiable. – The uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor

vehicle theft investigative procedures and motor vehicle identification examination techniques or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.

(3) Vehicle identification number. – A number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer or the Department of Motor Vehicles for the purpose of uniquely identifying a motor vehicle or motor vehicle part.

"**§ 20-402. Chop shop operation unlawful; restitution.**

(a) It shall be unlawful for any person to own, operate, or conduct a chop shop, to transport a motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop, or sell, transfer, purchase, or receive a motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.

(b) It shall be unlawful for any person to knowingly alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or knowingly remove a vehicle identification number, or cause any of the above to be done, with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part.

(c) It shall be unlawful for any person to buy, dispose, sell, transfer, or possess a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed.

The provisions of this subsection shall not apply to a motor vehicle scrap processor who, in the normal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part before or during the processing.

(d) In addition to any other punishment provided for by law, any person who violates this section shall be ordered to make restitution to the lawful owner of any stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

Financial loss includes, but is not limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. Lawful owner includes an innocent bona fide purchaser for value of a stolen motor vehicle or stolen motor vehicle part who does not know that the motor vehicle or motor vehicle part is stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser for value who has subrogated the claim.

The court shall determine the amount and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In that case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

"§ 20-403. Seizure of the motor vehicles, tools, implements, or other instrumentalities of the crime.

(a) All motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities possessed or used by any person in violation of G.S. 20-402 shall be subject to forfeiture as provided herein, except that:

(1) No motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;

(2) No motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;

(3) No motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities shall be forfeited pursuant to this section unless the violation involved is a felony;

(4) A forfeiture of any motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;

(5) No motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities to forfeiture under this section; and

(6) The trial judge in the criminal proceeding which may subject the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner, the procedures provided in subsection (e) of this section shall apply.

(b) Any motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities subject to forfeiture under this section may be seized by any law enforcement officer upon process issued by any district or superior court having original jurisdiction over the offense except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or subject to a search under a search warrant; or

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this section.

(c) The motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities shall be deemed to be in custody of the law enforcement agency seizing it. The law enforcement agency may remove the property to a place designated by it or request that the North Carolina Department of Justice or Department of Crime Control and Public Safety take custody of the property and remove it to an appropriate location for disposition in accordance with law; provided, the conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by an officer of the agency seizing the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities and shall be conditioned upon the return of said property to the custody of said officer on the day of trial to abide the judgment of the court.

(d) Whenever a motor vehicle, motor vehicle part, other conveyance, tool, implement, or other instrumentality is forfeited under this section, the law enforcement agency having custody of it may:

(1) Retain the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities for official use; or

(2) Transfer the motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities which were forfeited under the provisions of this section to the North Carolina Department of Justice or to the North Carolina Department of Crime Control and Public Safety when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice or the North Carolina Department of Crime Control and Public Safety, said motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities may be of official use to the North Carolina Department of Justice or the North Carolina Department of Crime Control and Public Safety; or

(3) Upon determination by the director of any law enforcement agency that a motor vehicle, motor vehicle part, other conveyance, tool, implement, or other instrumentality transferred pursuant to the provisions of this section is of no further use to said agency, such motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities may be sold as surplus property in the same manner as other motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities owned by the law enforcement agency. The proceeds from such sale, after deducting the cost thereof, shall be paid to the school fund of the county in which said conveyance was seized. Any conveyance

transferred to any law enforcement agency under the provisions of this section which has been modified or especially equipped from its original manufactured condition so as to increase its speed shall be used in the performance of official duties only. Such conveyance shall not be resold, transferred, or disposed of other than as junk unless the special equipment or modification has been removed and destroyed and the vehicle restored to its original manufactured condition.

(e) All motor vehicles, motor vehicle parts, other conveyances, tools, implements, or other instrumentalities subject to forfeiture under the provisions of this section shall be forfeited pursuant to the procedures for forfeiture of conveyances used to conceal, convey, or transport intoxicating beverages found in G.S. 18B-504. Provided, nothing in this section or G.S. 18B-504 shall be construed to require a conveyance to be sold when it can be used in the performance of official duties of the law enforcement agency.

"**§ 20-404. Civil proceedings.**

(a) The Attorney General, any district attorney, or any aggrieved party may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation G.S. 20-402. If the plaintiff in the proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, any court of competent jurisdiction after due provision for the rights of innocent persons shall grant relief by entering an appropriate order or judgment, including, but not limited to:

(1) Ordering any defendant to be divested of any interest in any property;

(2) Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;or

(3) Ordering the surrender of the charter of a corporation organized under the laws of the State or the revocation of a certificate authorizing a foreign corporation to conduct business within the State upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by this Article and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked.

(b) In a proceeding under this section, injunctive relief must be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury must be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an

aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

(c) Any person injured, directly or indirectly, by conduct constituting a violation by any person of G.S. 20-402, in addition to any other relief, shall have a cause of action for treble damages.

(d) A final judgment or decree rendered against the defendant in any civil or criminal proceeding shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to the civil or criminal proceeding.

(e) Personal service of any process in an action under this section may be made upon any person outside the State in a manner provided for in the North Carolina Rules for Civil Procedure.

(f) Obtaining any civil remedy under this Article does not preclude obtaining any other civil or criminal remedy under either this act or any other provision of law. Civil remedies under this section are supplemental and are not mutually exclusive.

(g) Any real property upon which a violation of G.S. 20-402 is found, by a court of competent jurisdiction, to have occurred shall be deemed a public nuisance as a matter of law and shall be forfeited consistent with the provisions of G.S. 19-6.1.

"**§ 20-405. Penalties.**

A person violating G.S. 20-402 of this Article shall be guilty of a Class G felony. A person having been previously convicted of a violation of this section shall, upon commission of a second or subsequent violation, be guilty of a Class F felony."

SECTION 2. 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.

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

June 12, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mildred Spearman	NCDOC
Anne Preyther	DCC
Tim Mark	NC DOC - DCC
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	JDAC
Eric Peterson	NC Agribusiness Council
Don McConnaughey	SAS
Paula Joshi	SAS
Becki Gray	John Locke Foundation

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 12, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pulley	NCATL
Joe Stewart	IFNC
Pete Jarvis	Gov Office
Daniel Baum	Kennedy Covington
Boyd Cauble	City of Charlotte
Will Polk	Office of the Gov
Bean Mills	NC Metropolitan Coalition
Rob Schofield	NC Policy Watch
Ruz Sawitt	NCCCC
Henry Hutaff	N.C.B.A.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Thursday, June 14, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **590** Limit Liability at Agricultural Fairs.-AB
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1214** Amend Interstate Compact/Adult Offenders.-AB
Draft Number: PSC 55516
Sequential Referral: None
Recommended Referral: Finance
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **824** Improve Gender Equity Reporting Statute.-AB
Draft Number: PCS 30496
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

SENATE JUDICIARY I COMMITTEE
(Civil)

June 14, 2007
10 a.m. –Room 1128

MINUTES

The Senate Judiciary Committee met Thursday, June 14, 2007 in Room 1027 of the Legislative Building. A quorum was present.

Senator Martin Nesbitt called the meeting to order. He announced that HB 1354 and SB 1357 would not be heard during today's meeting.

Senator Boseman was recognized to speak on House Bill 47 (Violate Order/Possess Deadly Weapon Felony).

Senator Boseman said the bill creates a felony offense for violation of a domestic violence protective order while armed with a deadly weapon, as recommended by the Joint Legislative Committee on Domestic Violence.

Committee Counsel, Hal Pell was recognized for further comments. He said that current law provides the following penalties for violating a domestic violence protective order (50B order):

- General violation of a 50B order – Class A1 misdemeanor.
- Violation of a 50B order with at least 3 prior convictions of violation of a 50B order – Class H felony.
- Commission of a felony which violates a 50B order – punishment as a felony one class higher.

Mr. Pell said HB 47 would make it a Class I felony for a person subject to a 50B order to possess a deadly weapon in violation of a provision of the order prohibiting the person from (i) being at a specified place, or (ii) near a person protected by the order. The "possession" element of the offense requires the deadly weapon to be on or about, or in close proximity to, the violator.

Extensive discussion followed. Senator Soles was concerned about "the close proximity" language. Other members were concerned that the bill went too far. There was discussion to amend the bill for clarification, but Senator Boseman requested that the bill be displaced.

Senator Nesbitt asked staff to do an analysis of domestic violence legislation, both ratified and pending legislation.

Rep. Deborah Ross arrived and explained to the committee why HB 47 was drawn the way it was. She added that the committee had worked closely with "Grassroots NC" and the NRA and those organizations did not oppose this bill.

The bill was carried over.

Rep. Ross was recognized to speak on House Bill 21 (Recovery of Costs in Civil Cases).

A Proposed Committee Substitute was distributed to the members and Senator Rand moved that it be adopted for consideration. The motion passed.

Rep. Ross said that the bill is a recommendation of the House Select Committee to Study the Recovery of Civil costs. It puts into statute which costs would be allowed and which costs would not be allowed in civil cases.

Committee Counsel, Kara McCraw was recognized for further comment.

Rep. Glazier, co-sponsor of the bill, was recognized to make comments. He said the Bar Association, the Trial Lawyers, and Defense Attorneys' Association compromised on this bill. He said the goal is to create objectivity so everybody would know what the costs would be.

Senator Berger was concerned about a witnesses' travel time.

Committee discussion followed.

Mark Boynton with the NC Bar Association confirmed that the bill is a compromise.

Senator Brunstetter suggested that the bill needed to be amended on Page 2, Line 7 from "mediators appointed by the court or agreed upon by the parties", be changed to "mediators appointed by the court, agreed upon by the parties" and the committee adopted the amendment.

Senator McKissick moved for a favorable report for the PCS, unfavorable as to original bill.

Senator Clodfelter asked if this bill would overrule existing Rule 26 – B4 which has to do with discovery hours.

Rep. Ross said that many of the courts have not been following that rule.

The bill was displaced.

Senator Nesbitt recognized Rep. Church to speak on House Bill 313 (Identify Loan Originator on Deed of Trust). He said that the bill would require that the identity of the loan originator be disclosed on the Deed of Trust.

Members of the committee felt that this was a much needed bill and that the effective dated should be moved up.

Senator Rand moved to amend the effective date to October 1, 2007 and the motion passed.

Senator Graham moved to incorporate the amendment into a Proposed Committee Substitute, give that a favorable report, unfavorable as to original bill and the motion passed.

The meeting adjourned at 11:00 a.m.

Copies of the 3rd Edition of House Bill 47, a Bill Analysis for the 3rd Edition HB 47, House Bill 21, a Proposed Committee Substitute for HB 21, a Bill Analysis for the PCS for HB 21, the 5th Edition of House Bill 313, and the adopted Proposed Committee Substitute for the 5th Edition of HB 313 are attached to these minutes as Attachments 1, 2, 3, 4, 5, 6, and 7, respectively.

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 47*

Committee Substitute Favorable 2/28/07

Third Edition Engrossed 5/23/07

Short Title: Violate Order/Possess Deadly Weapon Felony. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A FELONY OFFENSE FOR PERSONS WHO KNOWINGLY VIOLATE A DOMESTIC VIOLENCE PROTECTIVE ORDER WHILE ARMED WITH A DEADLY WEAPON AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective order.**

(a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to a person who is charged with

or convicted of a Class A or B1 felony or to a person charged under subsection (f) or subsection (g) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of three offenses under this Chapter, shall be guilty of a Class H felony.

(g) Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about their person or within close proximity to their person, knowingly violates a valid protective order as provided in subsection (a) of this section by failing to stay away from a place, or a person, as so directed under the terms of the order, shall be guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 47:
Violate Order/Possess Deadly Weapon Felony

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 13, 2007
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield, Jeffus	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	Third Edition		

SUMMARY: House Bill 47 creates a felony offense for violation of a domestic violence protective order while armed with a deadly weapon, as recommended by the Joint Legislative Committee on Domestic Violence. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

[As introduced, this bill was identical to S10, as introduced by Sen. Boseman, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: G.S. 50B-4.1 currently provides the following penalties for violating a domestic violence protective order (50B order):

- General violation of a 50B order – Class A1 misdemeanor.
- Violation of a 50B order with at least 3 prior convictions of violation of a 50B order – Class H felony.
- Commission of a felony which violates a 50B order – punishment as a felony one class higher.

BILL ANALYSIS: The act would make it a Class I felony for a person subject to a 50B order to possess a deadly weapon in violation of a provision of the order prohibiting the person from (i) being at a specified place, or (ii) near a person protected by the order. The "possession" element of the offense requires the deadly weapon to be on or about, or in close proximity to, the violator.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Summary contribution by Susan Sitze, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 21

Short Title:	Recovery of Costs in Civil Cases.	(Public)
Sponsors:	Representatives Glazier, Ross, Jones, Spear (Primary Sponsors); Alexander, Barnhart, Current, Farmer-Butterfield, Folwell, Harrison, Lewis, Lucas, McGee, Samuelson, Stam, Tillis, Underhill, and Wray.	
Referred to:	Rules, Calendar, and Operations of the House.	

January 29, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-19 reads as rewritten:

"**§ 6-19. When costs allowed as of course to defendant.**

Costs shall be allowed as of course to the defendant, in the actions mentioned in ~~the preceding section~~ G.S. 6-18 unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them."

SECTION 2. G.S. 6-20 reads as rewritten:

"**§ 6-20. Costs allowed or not, in discretion of court.**

~~In other actions, costs~~ Costs may be allowed ~~or not,~~ in the discretion of the court ~~court, unless otherwise provided by law.~~subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), except as otherwise provided by the General Statutes."

SECTION 3. G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are ~~also~~ assessable or recoverable, as the case may ~~be:~~ be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

(1) Witness fees, as provided by law.

(2) Jail fees, as provided by law.

(3) Counsel fees, as provided by law.

(4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of mediators appointed by the court or agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

(10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the cost of deposition transcripts.

(11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings."

SECTION 4. This act becomes effective May 1, 2007, and applies to all motions for costs filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H D

HOUSE BILL 21
PROPOSED SENATE COMMITTEE SUBSTITUTE H21-CSTC-38 [v.1]

6/13/2007 10:10:03 AM

Short Title: Recovery of Costs in Civil Cases. (Public)

Sponsors:

Referred to:

January 29, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-19 reads as rewritten:

"**§ 6-19. When costs allowed as of course to defendant.**

Costs shall be allowed as of course to the defendant, in the actions mentioned in ~~the preceding section~~ G.S. 6-18 unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them."

SECTION 2. G.S. 6-20 reads as rewritten:

"**§ 6-20. Costs allowed or not, in discretion of court.**

~~In other actions, costs~~ Costs may be allowed ~~or not,~~ in the discretion of the court ~~court, unless otherwise provided by law.~~subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), except as otherwise provided by the General Statutes."

SECTION 3. G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are ~~also~~ assessable or recoverable, as the case may ~~be:~~ be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

(1) Witness fees, as provided by law.
(2) Jail fees, as provided by law.
(3) Counsel fees, as provided by law.
(4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of mediators appointed by the court or agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

(10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the cost of deposition transcripts.

(11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings."

SECTION 4. This act becomes effective July 1, 2007, and applies to all motions for costs filed on or after that date.

HOUSE BILL 21: Recovery of Costs in Civil Cases

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 14, 2007
Introduced by:	Reps. Glazier, Ross, Jones, Spear	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to First Edition H21-CSTC-38[v.1]		

SUMMARY: House Bill 21 is a recommendation of the House Select Committee to Study the Recovery of Civil Costs. This bill would allow costs to be recovered in civil cases in the discretion of the court, subject to specific limitations set in statute.

The PCS would change the effective date of the bill from May 1, 2007 to July 1, 2007.

CURRENT LAW: There are several statutes that address costs in civil cases. G.S. 6.1 states that a prevailing party is entitled to costs as set forth in Chapter 6 and Chapter 7A. G.S. 6-18 and G.S. 6-19 delineate the types of actions in which costs can be awarded to prevailing party. G.S. 6-20 provides that the costs may be allowed in the discretion of the court unless otherwise specified in the law. G.S. 7A-305, however, lists the expenses that may be awarded by the court. These costs include: witness fees, jail fees, counsel fees, fees for service of process by mail, transcripts for appeals, personal service and civil process, fees of certain court appointees and interpreters, and authorized premiums for surety bonds for prosecution.

BILL ANALYSIS: House Bill 21 would clarify in G.S. 6-20 that costs may be allowed in the discretion of the court, but that costs are subject to the limitations set forth in G.S. 7A-305(d), except as otherwise provided in the statutes.

House Bill 21 would also clarify in G.S. 7A-305(d) that expenses set forth in that subsection are complete and exclusive and constitute a limit on the court's discretion to tax costs pursuant to G.S. 6-20. The bill would add the following expenses to the current list of expenses that can be awarded:

- Fees of mediators appointed by the court or agreed by the parties.
- Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the costs of deposition transcripts.
- Reasonable and necessary fees of expert witnesses for the time spent providing testimony at trials, depositions and other proceedings.

EFFECTIVE DATE: This bill would become effective July 1, 2007 and apply to all motions for cost filed on or after that date.

BACKGROUND: There have been a number of conflicting cases from the North Carolina Court of Appeals on the interpretations of G.S. 6-20 and G.S. 7A-305. There have been three approaches used by the Court of Appeals in addressing court costs that are not listed in G.S. 7A-305. The first line of cases uses a strict interpretation that allows costs only if they are specifically listed in G.S. 7A-305. The second line of cases allows the court to award the costs listed in G.S. 7A-305, as well as any costs that are "reasonable and necessary" under the discretionary provision of G.S. 6-20. From 1982-2002, the courts allowed items such as travel expenses, trial exhibits, and depositions costs even though they are not listed in G.S. 7A-305. The third approach allows for costs for the items listed in G.S. 7A-305 and any costs recognized by "existing common law before 1983" or in other words, any costs allowed by an appellate court before 1983. The House Select Committee to Study the Recovery of Civil Costs addressed these conflicts and recommended House Bill 21.

This bill summary was substantially contributed to by Drupti Chauhan, Staff Counsel.

H0021e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 5

HOUSE BILL 313
Committee Substitute Favorable 3/26/07
Committee Substitute #2 Favorable 4/11/07
Committee Substitute #3 Favorable 4/25/07
Committee Substitute #4 Favorable 5/9/07

Short Title: Identify Loan Originator on Deed of Trust. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT SETTLEMENT AGENTS INCLUDE THE IDENTITY OF THE LOAN ORIGINATOR ON THE DEED OF TRUST, AND THAT LENDERS INCLUDE INFORMATION REGARDING THE LOAN ORIGINATION IN THE LOAN CLOSING INSTRUCTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45A-4 reads as rewritten:

"**§ 45A-4. Duty of settlement agent.**

(a) The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to the recordation of any deeds or loan documents required to be filed by the lender, if applicable, and verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

(1) A certified check;

(2) A check issued by the State, the United States, a political subdivision of the State, or an agency or instrumentality of the United States, including an agricultural credit association;

(3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit

Insurance Corporation or a comparable agency of the federal or state government;

(4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;

(5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;

(6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars ($5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;

(7) A check drawn on the account of or issued by a mortgage banker licensed under Article 19A of Chapter 53 of the General Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three hundred thousand dollars ($300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check.

(b) If the settlement agent receives information from the lender as provided in G.S. 45A-5(b) or otherwise has actual knowledge that a mortgage broker or other person acted as a mortgage broker in the origination of the loan, the settlement agent shall place an entry on page 1 of the deed of trust showing the name of the mortgage broker or other person who acted as a mortgage broker in the origination of the loan. Information pertaining to the identity of the mortgage broker or other person who acted as a mortgage broker in the origination of the loan shall not be considered confidential information. The terms "mortgage broker" and "act as a mortgage broker" shall have the same meaning as provided in G.S. 53-243.01."

SECTION 2. G.S. 45A-5 reads as rewritten:

"**§ 45A-5. Duty of lender, purchaser, or seller.**

(a) The lender, purchaser, or seller shall, at or before closing, deliver closing funds, including the gross or net loan funds, if applicable, to the settlement agent either in the form of collected funds or in the form of a negotiable instrument described in ~~G.S. 45A-4(1) through (7),~~G.S. 45A-4(a)(1) through (7), provided that the lender, purchaser, or seller, as applicable, shall cause that negotiable instrument to be honored upon presentment for payment to the bank or other depository institution upon which the instrument is drawn. However, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, no later than the business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., cause disbursement of loan funds to the settlement agent in one or more of the forms prescribed by provisions in this Chapter.

(b) The lender shall include in the loan closing instructions to the settlement agent the name of the mortgage broker or other person, if any, who acted as a mortgage broker in the origination of the loan."

SECTION 3. This act is effective when it becomes law and applies to deeds of trust registered on or after July 1, 2008.

Attachment 7

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H **7**

HOUSE BILL 313
Committee Substitute Favorable 3/26/07
Committee Substitute #2 Favorable 4/11/07
Committee Substitute #3 Favorable 4/25/07
Committee Substitute #4 Favorable 5/9/07
Senate Judiciary I (Civil) Committee Substitute Adopted 6/19/07
Seventh Edition Engrossed 6/20/07

Short Title: Identify Loan Originator on Deed of Trust. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT SETTLEMENT AGENTS INCLUDE THE IDENTITY OF THE LOAN ORIGINATOR ON THE DEED OF TRUST, AND THAT LENDERS INCLUDE INFORMATION REGARDING THE LOAN ORIGINATION IN THE LOAN CLOSING INSTRUCTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45A-4 reads as rewritten:

"**§ 45A-4. Duty of settlement agent.**

(a) The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to the recordation of any deeds or loan documents required to be filed by the lender, if applicable, and verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

(1) A certified check;

(2) A check issued by the State, the United States, a political subdivision of the State, or an agency or instrumentality of the United States, including an agricultural credit association;

(3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government;

(4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;

(5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;

(6) A personal or commercial check or checks in an aggregate amount not exceeding five

thousand dollars ($5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;

(7) A check drawn on the account of or issued by a mortgage banker licensed under Article 19A of Chapter 53 of the General Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three hundred thousand dollars ($300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check.

(b) If the settlement agent receives information from the lender as provided in G.S. 45A-5(b) or otherwise has actual knowledge that a mortgage broker or other person acted as a mortgage broker in the origination of the loan, the settlement agent shall place an entry on page 1 of the deed of trust showing the name of the mortgage broker or other person who acted as a mortgage broker in the origination of the loan. Information pertaining to the identity of the mortgage broker or other person who acted as a mortgage broker in the origination of the loan shall not be considered confidential information. The terms "mortgage broker" and "act as a mortgage broker" shall have the same meaning as provided in G.S. 53-243.01."

SECTION 2. G.S. 45A-5 reads as rewritten:

"**§ 45A-5. Duty of lender, purchaser, or seller.**

(a) The lender, purchaser, or seller shall, at or before closing, deliver closing funds, including the gross or net loan funds, if applicable, to the settlement agent either in the form of collected funds or in the form of a negotiable instrument described in ~~G.S. 45A-4(1) through (7),~~G.S. 45A-4(a)(1) through (7), provided that the lender, purchaser, or seller, as applicable, shall cause that negotiable instrument to be honored upon presentment for payment to the bank or other depository institution upon which the instrument is drawn. However, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, no later than the business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., cause disbursement of loan funds to the settlement agent in one or more of the forms prescribed by provisions in this Chapter.

(b) The lender shall include in the loan closing instructions to the settlement agent the name of the mortgage broker or other person, if any, who acted as a mortgage broker in the origination of the loan."

SECTION 3. This act is effective when it becomes law and applies to deeds of trust registered on or after April 1, 2008.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 14, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Lisa Kinsbrough	NCCFBA
Daniel Baum	Kennedy Covington
Cliff Vandiver	Gov's office
Christine Wunsche	106-Daily Bulletin
Sarah Price	BGA
[illegible]	BGA
Brian Mullis	Civitas
[illegible] O'Brien	PFFNC
Hamilton Hicks	Amateur Radio - HB1340
Rob Schofield	NC Policy Watch

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 14, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	NC Bar Assn
Mack Boynton	NCBA
Susan Valauri	Nationwide
Joseph A. Smith, Jr.	Commissioner of Banks
Phil Lehman	NC ASO
Robert Lee Guy	NC DCC
Hannah H. Rowland	NCDCC
D.L. Hunter	Charlotte-Mecklenburg Police Dept.
Chip Killian	Nelson Mullins
Paul Stock	NCBA
Betty Turner	BAC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 14, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Tate	MWC
Doris Weaver	NC CWA Political Council
Wallace Weaver	CWA
Tony Jones	NCCE
Karen Brown	DOC - Correction Enterprises
Tracy Little	NC DOC
Willard Swann	NCDOC
Jami Fitzgerald	NCFPC
Russ Dubishar	EFNC

SENATE JUDICIARY I COMMITTEE
(Civil)

June 19, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, June 19 in Room 1027 of the Legislative Building. A quorum was present.

Committee Chairman Senator Nesbitt called the meeting to order and recognized Rep. Rick Glazier to speak on HB 786 (LEO Provide Info to DA for Discovery). A proposed committee substitute was distributed to the members and Senator Clodfelter moved that it be adopted for consideration. The motion passed.

Rep. Glazier told the committee this act requires law enforcement and prosecutorial agencies to make available to the State a complete copy of their files used in the investigation or prosecution of a defendant. It would become effective on December 1, 2007 and applies to trials calendared on or after that date. He said he knew of no opposition to the bill.

Senator Nesbitt had a question about "prosecutorial agency" and Committee Counsel, Hal Pell, told him that that is defined by statute.

Senator McKissick moved to give the proposed committee substitute for HB 786 a favorable report, unfavorable to original bill. The motion passed.

Senator Nesbitt recognized Rep. Karen Ray to speak on HB 29 ((Sex Offender GPS/DOC Requests). A proposed committee substitute was distributed to the committee and Senator Albertson; moved that it be adopted for consideration. The motion passed.

Rep. Ray told the committee that SB 29 amends various statutes to clarify the procedure for satellite-based monitoring of sex offenders, and makes other changes to the sex offender laws.

Committee Counsel Hal Pell was recognized to speak on the bill. He said that, as introduced, this bill was identical to S196, as introduced by Senator Shaw, which is also in this committee.

Discussion followed. Sen. Clodfelter asked for a fiscal note on the bill and Senator McKissick was concerned about warrantless searches. The bill was temporarily displaced.

Next, Rep. Thom Tillis was recognized to speak on HB 1354 (Motor Vehicle Chop Shop Act).
Senator Tillman was recognized and said that if the subcommittee was comfortable with the bill, he would move for a favorable report.

Discussion followed.

A proposed committee substitute was distributed to the committee and Senator Clodfelter moved that it be adopted for consideration. The motion passed.

Committee counsel, Bill Gilkeson, was recognized to explain changes to the 2nd Edition of HB 1354 which had been taken up at an earlier meeting. He said that the definition of "chop shop" is dropped. Instead, the bill refers to activities prohibited by this act. GS 14-72.7(a)(2) makes it a crime to permit a "place to be used for activities prohibited by the act. The "knowing" element is, it is hoped, firmly put in place with regard to all the crimes. In addition, 14-72.7(b) has a disclaimer for innocent activity. He said it is broader than the scrap processor exception in the old version. It exempts any activity done without knowledge of the previous illegal activity concerning the vehicle or part, and also any activity done as a part of, or subsequent to, law enforcement proceedings.

Mr. Gilkeson said that per Sen. Steven's request and Mark Newbold's endorsement, 14-72.79(c) and (d) add a civil penalty plus a private right of action.

Senator Rand moved to amend the bill on page 2, line 15 "by deleting the term "to the district attorney", and the motion passed.

Senator Clodfelter then moved to amend the bill on page 1, line 15 by inserting the following between "person" and "has": "either owns or", and the motion passed.

Senator Tillman moved that the amendments be incorporated into a new proposed committee substitute, that PCS be given a favorable report, unfavorable as to the original bill. The motion passed.

Senator Nesbitt recognized Rep. Deborah Ross to explain the 3rd edition of HB 47 (Violate Order/Possess Deadly Weapon Felony).

Rep. Ross asked that the Chairman appoint a subcommittee to study the bill, for a future meeting. Members include Senators Clodfelter, Boseman, Rand, and McKissick.

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

Copies of the 2nd edition to HB 786, a Proposed Committee Substitute for HB 786, a Bill Analysis for the PCS for HB 786, HB 29, a Proposed Committee Substitute for HB 29, a Bill Analysis for the PCS for HB 29, 2nd edition of HB 1354, a proposed Committee Substitute for HB 1354, a Bill Analysis for the PCS for HB 1354, the Rand Amendment to the PCS for HB 1354, the Clodfelter Amendment to the PCS for HB 1354, the 3rd edition of HB 47, and the Bill Analysis for HB 47 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, respectively.

Respectively submitted,

Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 786
Second Edition Engrossed 5/8/07

Short Title:	LEO Provide Info to DA for Discovery.	(Public)
Sponsors:	Representatives Earle, Glazier, Harrison, Parmon (Primary Sponsors); Alexander, Brown, Cunningham, Hall, Insko, Lucas, Luebke, Wainwright, and Weiss.	
Referred to:	Judiciary II.	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ENSURE DISTRICT ATTORNEYS RECEIVE ALL NECESSARY INFORMATION FROM LAW ENFORCEMENT AGENCIES AS RECOMMENDED BY THE HOUSE INTERIM STUDY COMMITTEE ON CAPITAL PUNISHMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. Oral statements shall be in written or recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the

expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section.

(c) A law enforcement agency shall make available to the State a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a)."

SECTION 2. This act becomes effective December 1, 2007, and applies to cases where the trial date set pursuant to G.S. 7A-49.4 is on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 786
Second Edition Engrossed 5/8/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H786-CSRK-45 [v.1]

6/13/2007 10:44:06 AM

Short Title: LEO Provide Info to DA for Discovery. (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ENSURE DISTRICT ATTORNEYS RECEIVE ALL NECESSARY INFORMATION FROM LAW ENFORCEMENT AGENCIES AS RECOMMENDED BY THE HOUSE INTERIM STUDY COMMITTEE ON CAPITAL PUNISHMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. Oral statements shall be in written or recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the

expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section.

(c) Upon request by the State, a law enforcement or prosecutorial agency shall make available to the State a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a)."

SECTION 2. This act becomes effective December 1, 2007, and applies to cases where the trial date set pursuant to G.S. 7A-49.4 is on or after that date. Nothing in this act shall be construed to abrogate any judicial rulings or decisions prior to the effective date of this act that required a law enforcement agency to make available to the State a complete copy of the complete files related to the investigation of crimes committed or the prosecution of a defendant. 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 BILL 786:
LEO Provide Info to DA for Discovery

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 13, 2007
Introduced by:	Reps. Earle, Glazier, Harrison, Parmon	**Summary by:**	Hal Pell
Version:	PCS to Second Edition		Committee Counsel

SUMMARY: This act requires law enforcement and prosecutorial agencies to make available to the State a complete copy of their files used in the investigation or prosecution of a defendant. The act is effective on December 1, 2007, and applies to trials calendared on or after that date.

CURRENT LAW: Under G.S. 15A-902, the parties must request in writing that the other party voluntarily comply with discovery requests. If either party refuses to voluntarily comply with the discovery request, the requesting party may make a motion to compel discovery under G.S. 15A-903.

G.S. 15A-903 provides the court must order the State, upon motion of the defendant, to make available "the complete files of all law enforcement and prosecutorial agencies." The statute defines the term "file" to include:

- the defendant's statements.
- the co-defendant's statements.
- witness statements.
- notes of the investigating officer.
- results of tests and examinations.
- any other matter or evidence obtained during the investigation of the offences alleged to have been committed by the defendant.

BILL ANALYSIS: This act amends the law to impose a specific requirement upon law enforcement and prosecutorial agencies to make available to the State, upon request, a complete copy of their complete files used in the investigation or prosecution of a defendant.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to cases where the trial date is on or after that date. The act provides that nothing in the act should be construed to change any current judicial precedent that requires law enforcement or prosecutorial agencies files to be disclosed.

Summary Contribution by Heather Fennell, Staff Attorney.

H0786e2-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 29
Committee Substitute Favorable 4/16/07

Short Title: Sex Offender GPS/DOC Requests. (Public)

Sponsors:

Referred to:

January 30, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR SATELLITE-BASED MONITORING OF SEX OFFENDERS AND TO MAKE OTHER CHANGES TO THE SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. 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. ~~An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.~~

(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) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. ~~An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the~~

~~court and is not subject to a requirement of lifetime satellite-based 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."

SECTION 2. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, or has committed an aggravated offense, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 3. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the Department shall schedule a hearing in the court of the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, or (iii) the conviction offense was an aggravated offense, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 4. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40C. Requirements of enrollment.**

(a) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives an active sentence shall be enrolled and receive the appropriate equipment immediately upon the offender's release from the Division of Prisons.

(b) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives an intermediate punishment shall, immediately upon sentencing, report to the Division of Community Corrections for enrollment in the satellite-based monitoring program, and, if necessary, shall return at any time designated by that Division to receive the appropriate equipment. If the intermediate sentence includes a required period of imprisonment, the offender shall not be required to be enrolled in the satellite-based monitoring program during the period of imprisonment.

(c) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives a community punishment shall, immediately upon sentencing, report to the Division of Community Corrections for enrollment in the satellite-based monitoring program, and, if necessary, shall return at any time designated by that Division to receive the appropriate equipment."

SECTION 5. G.S. 14-208.42 reads as rewritten:

"**§ 14-208.42. ~~Lifetime registration offenders~~ Offenders required to submit to satellite-based monitoring ~~for life and to continue on unsupervised probation~~required to cooperate with Department upon completion of sentence.**

Notwithstanding any other provision of law, when an offender is required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B, ~~the court sentences an offender who is in the category described by G.S. 14-208.40(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender,~~ upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, the offender shall continue to be enrolled in the satellite-based monitoring program for ~~the offender's life and be placed on unsupervised probation~~the period required by G.S. 14-208.40A or G.S. 14-208.40B unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.43.

The Department shall have the authority to have contact with the offender at the offender's residence or to require the offender to appear at a specific location as needed

for the purpose of enrollment, to receive monitoring equipment, to have equipment examined or maintained, and for any other purpose necessary to complete the requirements of the satellite-based monitoring program. The offender shall cooperate with the Department and the requirements of the satellite-based monitoring program until the offender's requirement to enroll is terminated and the offender has returned all monitoring equipment to the Department."

SECTION 6. G.S. 14-208.44 reads as rewritten:

"**§ 14-208.44. Failure to enroll; tampering with device.**

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class F felony.

(b) Any person who intentionally tampers with, removes, ~~or~~ ~~vandalizes~~vandalizes, or otherwise interferes with the proper functioning of a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class E felony.

(c) Any person required to enroll in a satellite-based monitoring program who fails to provide necessary information to the Department, or fails to cooperate with the Department's guidelines and regulations for the program shall be guilty of a Class 1 misdemeanor.

(d) For purposes of this section, 'enroll' shall include appearing, as directed by the Department, to receive the necessary equipment."

SECTION 7. 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. 14-208.40(a)(1).

(8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.40(a)(2), 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.

(9) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the probationer's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the probation supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised ~~probation, except as provided in G.S. 14-208.42.~~probation."

SECTION 8. G.S. 15A-1374(b)(11) reads as rewritten:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

...

(11) Submit at reasonable times to warrantless searches ~~of his person~~ by a parole officer of the parolee's person and of the parolee's vehicle and premises while the parolee is present, for purposes reasonably related to ~~his~~ the parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. If the parolee 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, warrantless searches of the parolee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the parole supervision. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive."

SECTION 9. 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:

(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. 14-208.40(a)(1).

(7) 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. 14-208.40(a)(2).

(8) Submit at reasonable times to warrantless searches by a post-release supervision officer of the supervisee's person and of the supervisee's vehicle and premises while the supervisee is present, for purposes reasonably related to the post-release supervision, but the supervisee may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the supervisee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the post-release supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive."

SECTION 10. G.S. 14-208.16(d) reads as rewritten:

"(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, a residence is established when the registrant does any of the following:

(1) Purchases the residence or enters into a specifically enforceable contract to purchase the residence.

(2) Enters into a written lease contract for the residence and for as long as the person is lawfully entitled to remain on the premises.

(3) Resides with an immediate family member who established residence in accordance with this subsection. For purposes of this subsection, "immediate family member" means a ~~child, sibling, or parent~~child or sibling who is 18 years of age or older, or a parent, grandparent, legal guardian, or spouse of the registrant."

SECTION 11. G.S. 14-208.43 is amended by adding a new subsection to read:

"(d1) Notwithstanding the provisions of this section, if the Commission is notified by the Department of Correction that the offender has been released, pursuant to G.S. 14-208.12A, from the requirement to register under Part 2 of Article 27A of this Chapter, upon request of the offender, the Commission shall order the termination of the monitoring requirement."

SECTION 12. G.S. 14-208.45 reads as rewritten:

"**§ 14-208.45. Fees.**

(a) ~~There shall be~~Except as provided in subsections (b) and (b1) of this section, each person required to enroll pursuant to this Part shall pay a one-time fee of ninety dollars ~~($90.00) assessed to each person required to enroll pursuant to this Part.~~($90.00). The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction. 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) When a court determines a person is required to enroll pursuant to G.S. 14-208.40A, the~~The~~ court may exempt a person from paying the fee required by subsection (a) of this section only for good cause and upon motion of the person ~~placed on~~required to enroll in 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.~~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.~~

(c) When a person is required to enroll based on a determination by the Department pursuant to G.S. 14-208.40B, the Department shall have the authority to exempt the person from paying the fee only for good cause and upon request of the person required to enroll in satellite-based monitoring. The Department 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.

~~(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction.~~

~~(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 13. G.S. 14-208.41 reads as rewritten:

"**§ 14-208.41. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

(a) Any person described by G.S. 14-208.40(a)(1) 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 registration period imposed under G.S. 14-208.23 which is the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to ~~G.S. 14-208.42.~~G.S. 14-208.43.

(b) Any person described by G.S. 14-208.40(a)(2) who is ordered by the court pursuant to G.S. 14-208.40A or required by the Department pursuant to G.S. 14-208.40B to enroll in a satellite-based monitoring program shall do so 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 time ordered by the ~~court.~~court or the period of time specified by the Department."

SECTION 14. G.S. 143B-266(e) reads as rewritten:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by ~~G.S. 14-208.42.~~G.S. 14-208.43. The Commission may grant or deny those requests in compliance with ~~G.S. 14-208.42.~~G.S. 14-208.43."

SECTION 15. Section 2 of this act becomes effective December 1, 2007, and applies to sentences entered on or after that date. Section 6 of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Sections 7, 8, and 9 of this act become effective December 1, 2007, and apply to persons placed on probation, parole, or post-release supervision on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 29

Committee Substitute Favorable 4/16/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H29-CSRK-46 [v.1]

6/13/2007 4:14:15 PM

Short Title: Sex Offender GPS/DOC Requests. (Public)

Sponsors:

Referred to:

January 30, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR SATELLITE-BASED MONITORING OF SEX OFFENDERS AND TO MAKE OTHER CHANGES TO THE SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. 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. ~~An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.~~

(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) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. ~~An offender in this category who~~

~~is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based 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."

SECTION 2. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, or has committed an aggravated offense, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 3. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the Department shall schedule a hearing in the court of the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, or (iii) the conviction offense was an aggravated offense, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results

to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 4. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40C. Requirements of enrollment.**

(a) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives an active sentence shall be enrolled and receive the appropriate equipment immediately upon the offender's release from the Division of Prisons.

(b) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives an intermediate punishment shall, immediately upon sentencing, report to the Division of Community Corrections for enrollment in the satellite-based monitoring program, and, if necessary, shall return at any time designated by that Division to receive the appropriate equipment. If the intermediate sentence includes a required period of imprisonment, the offender shall not be required to be enrolled in the satellite-based monitoring program during the period of imprisonment.

(c) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives a community punishment shall, immediately upon sentencing, report to the Division of Community Corrections for enrollment in the satellite-based monitoring program, and, if necessary, shall return at any time designated by that Division to receive the appropriate equipment."

SECTION 5. G.S. 14-208.42 reads as rewritten:

"**§ 14-208.42. ~~Lifetime registration offenders~~ Offenders required to submit to satellite-based monitoring ~~for life and to continue on unsupervised probation~~required to cooperate with Department upon completion of sentence.**

Notwithstanding any other provision of law, when an offender is required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B, ~~the court sentences an offender who is in the category described by G.S. 14-208.40(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender,~~ upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, the offender shall continue to be enrolled in the satellite-based monitoring program for ~~the offender's life and be placed on unsupervised probation~~the period required by G.S. 14-208.40A or G.S. 14-208.40B unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.43.

The Department shall have the authority to have contact with the offender at the offender's residence or to require the offender to appear at a specific location as needed for the purpose of enrollment, to receive monitoring equipment, to have equipment examined or maintained, and for any other purpose necessary to complete the requirements of the satellite-based monitoring program. The offender shall cooperate with the Department and the requirements of the satellite-based monitoring program until the offender's requirement to enroll is terminated and the offender has returned all monitoring equipment to the Department."

SECTION 6. G.S. 14-208.44 reads as rewritten:

"**§ 14-208.44. Failure to enroll; tampering with device.**

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class F felony.

(b) Any person who intentionally tampers with, removes, ~~or vandalizes~~vandalizes, or otherwise interferes with the proper functioning of a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class E felony.

(c) Any person required to enroll in a satellite-based monitoring program who fails to provide necessary information to the Department, or fails to cooperate with the Department's guidelines and regulations for the program shall be guilty of a Class 1 misdemeanor.

(d) For purposes of this section, 'enroll' shall include appearing, as directed by the Department, to receive the necessary equipment."

SECTION 7. 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. 14-208.40(a)(1).

(8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.40(a)(2), 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.

(9) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the probationer's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the probation supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised ~~probation, except as provided in G.S. 14-208.42.~~probation."

SECTION 8. G.S. 15A-1374(b)(11) reads as rewritten:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

...

(11) Submit at reasonable times to warrantless searches ~~of his person~~ by a parole officer of the parolee's person and of the parolee's vehicle and premises while the parolee is present, for purposes reasonably related to ~~his~~ the parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. If the parolee 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, warrantless searches of the parolee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the parole supervision. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for

the actual cost of drug testing and drug screening, if the results are positive."

SECTION 9. 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:

(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. 14-208.40(a)(1).

(7) 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. 14-208.40(a)(2).

(8) Submit at reasonable times to warrantless searches by a post-release supervision officer of the supervisee's person and of the supervisee's vehicle and premises while the supervisee is present, for purposes reasonably related to the post-release supervision, but the supervisee may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the supervisee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the post-release supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the supervisee may also be

required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive."

SECTION 9A. G.S. 14-208.9(a) reads as rewritten:

"(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. If the person moves to another county, the person shall also report in person to the sheriff of the new county and provide written notice of the person's address not later than the tenth day after the change of address. 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~~When the Division receives notice from a sheriff that a person required to register is moving to another county in the State, the Division shall inform the sheriff of the new county of the person's new residence."

SECTION 10. G.S. 14-208.16(d) reads as rewritten:

"(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, a residence is established when the registrant does any of the following:

(1) Purchases the residence or enters into a specifically enforceable contract to purchase the residence.

(2) Enters into a written lease contract for the residence and for as long as the person is lawfully entitled to remain on the premises.

(3) Resides with an immediate family member who established residence in accordance with this subsection. For purposes of this subsection, "immediate family member" means a ~~child, sibling, or parent~~child or sibling who is 18 years of age or older, or a parent, grandparent, legal guardian, or spouse of the registrant."

SECTION 11. G.S. 14-208.43 is amended by adding a new subsection to read:

"(d1) Notwithstanding the provisions of this section, if the Commission is notified by the Department of Correction that the offender has been released, pursuant to G.S. 14-208.12A, from the requirement to register under Part 2 of Article 27A of this Chapter, upon request of the offender, the Commission shall order the termination of the monitoring requirement."

SECTION 12. G.S. 14-208.45 reads as rewritten:

"**§ 14-208.45. Fees.**

(a) ~~There shall be~~Except as provided in subsections (b) and (b1) of this section, each person required to enroll pursuant to this Part shall pay a one-time fee of ninety dollars ~~($90.00) assessed to each person required to enroll pursuant to this Part.~~($90.00). The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction. 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) When a court determines a person is required to enroll pursuant to G.S. 14-208.40A, the~~The~~ court may exempt a person from paying the fee required by subsection (a) of this section only for good cause and upon motion of the person ~~placed on~~required to enroll in 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.~~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.~~

(c) When a person is required to enroll based on a determination by the Department pursuant to G.S. 14-208.40B, the Department shall have the authority to exempt the person from paying the fee only for good cause and upon request of the person required to enroll in satellite-based monitoring. The Department 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.

~~(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction.~~

~~(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 13. G.S. 14-208.41 reads as rewritten:

"**§ 14-208.41. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

(a) Any person described by G.S. 14-208.40(a)(1) 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 registration period imposed under G.S. 14-208.23 which is the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to ~~G.S. 14-208.42.~~G.S. 14-208.43.

(b) Any person described by G.S. 14-208.40(a)(2) who is ordered by the court pursuant to G.S. 14-208.40A or required by the Department pursuant to G.S. 14-208.40B to enroll in a satellite-based monitoring program shall do so 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 time ordered by the ~~court.~~court or the period of time specified by the Department."

SECTION 14. G.S. 143B-266(e) reads as rewritten:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by ~~G.S. 14-208.42.~~G.S. 14-208.43. The Commission may grant or deny those requests in compliance with ~~G.S. 14-208.42.~~G.S. 14-208.43."

SECTION 15. Section 2 of this act becomes effective December 1, 2007, and applies to sentences entered on or after that date. Section 6 of this act becomes

effective December 1, 2007, and applies to offenses committed on or after that date. Sections 7, 8, and 9 of this act become effective December 1, 2007, and apply to persons placed on probation, parole, or post-release supervision on or after that date. Section 9A becomes effective December 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 29:
Sex Offender GPS/DOC Requests

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 13, 2007
Introduced by:	Reps. Ray, Goforth	**Summary by:**	Hal Pell
Version:	PCS to Second Edition		Committee Co-Counsel

SUMMARY: This act amends various statutes to clarify the procedure for satellite-based monitoring of sex offenders, and makes other changes to the sex offender laws.

[As introduced, this bill was identical to S196, as introduced by Sen. Shaw, which is currently in Senate Judiciary I (Civil). The Proposed Committee Substitute adds Section 9A to the Second Edition of the House Bill]

BILL ANALYSIS:

Section 1 makes technical changes to correspond to changes in Sections 2 and 3.

Section 2 creates a new G.S. 14-208.40A which establishes a procedure for determining when a sex offender is subject to satellite-based (GPS) monitoring. When an offender is convicted of a reportable conviction, during the sentencing phase, the district attorney must present any evidence that

- the offender has been classified as a sexually violent predator,
- the offender is a recidivist,
- the conviction offense was an aggravated offense, or
- the offense involved the physical, mental, or sexual abuse of a minor.

The offender may present any evidence that the district attorney's evidence is not correct.

After receipt of evidence from the parties, the court will determine if the offender meets any of the classifications, and if so, make a finding of fact to that effect. If the offender is found to be a sexually violent predator, a recidivist, or to have committed an aggravated offense, the court must order them to enroll in GPS monitoring for life.

If the offender is found to have committed an offense involving the physical, mental, or sexual abuse of a minor, the court shall order the Department of Correction to do a risk assessment of the offender. The Department has 30 to 60 days to do the assessment and if the court determines, based on the Department's risk assessment, that the offender requires the highest possible level of supervision and monitoring, the court must order them to enroll in GPS monitoring and shall specify the period of time the offender must remain enrolled.

Section 3 creates a new section which establishes a procedure for determining whether a sex offender is subject to GPS monitoring when no determination was made by a court. The Department of Correction shall make an initial determination whether the offender is required to enroll, and if so, schedules a hearing in the court in the county where the offender resides. The court shall then determine whether the offender is required to enroll in satellite-based monitoring for life, or to require the Department to conduct a risk assessment. The court will then determine the length of time for enrollment following receipt of the risk assessment from the Department.

Section 4 creates a new G.S. 14-208.40C which establishes the time an offender is required to report to the Department of Correction to enroll, based on whether they receive an active, an intermediate, or a community punishment.

Section 5 amends G.S. 14-208.42 to extend unsupervised probation for all offenders required to enroll in GPS monitoring. It also authorizes the Department to have contact with an offender at the offender's residence, or to require the offender to appear at a specific location for the purpose of enrollment, or any other purpose necessary to complete the requirements of the program.

Section 6 amends G.S. 14-208.44 to clarify that failure to provide necessary information to the Department, or fails to cooperate with the program guidelines, is guilty of a Class 1 misdemeanor.

Section 7 amends the special conditions of probation for sex offenders to allow the probation officer to conduct warrantless searches of the probationer's person, vehicle and premises, while the probationer is present, and clarifies that the probationer's computer or other electronic mechanism containing electronic data may also be searched.

Section 8 amends the conditions of parole to authorize warrantless searches of a parolee's computer and other electronic data equipment if the parolee is a sex offender.

Section 9 amends the conditions of post-release supervision for sex offenders to allow the supervising officer to conduct warrantless searches of the supervisee's person, vehicle and premises, while the supervisee is present, and clarifies that the supervisee's computer or other electronic data devices may also be searches.

Section 9A amends the statute requiring persons on the sex offender registry to notify the sheriff when moving from county to county within the State.

Section 10 amends the exceptions to the residency restrictions for sex offenders to include a grandparent, legal guardian, or spouse, and also clarifies that a child or sibling must be 18 years old or older.

Section 11 requires the Post-Release Supervision and Parole Commission to terminate the GPS monitoring requirement for any sex offender who is released from the requirement to register as a sex offender.

Section 12 amends the statute regarding fees for GPS monitoring to clarify that all offenders must pay the fee unless they are exempted for good cause shown by the court or the Department of Correction.

Section 13 makes technical and conforming amendments to the statute requiring enrollment.

Section 14 makes technical amendments.

EFFECTIVE DATE:

:Section 2 – December 1, 2007 and applies to sentences entered on or after that date.

Section 6 – December 1, 2007 and applies to offenses committed on or after that date.

Sections 7 through 9 – December 1, 2007 and apply to persons placed on probation, parole or post-release supervision on or after that date.

Section 9A – December 1, 2007.

All other sections are effective when the act becomes law.

H0029e2-SMRK Summary Contribution by Susan Sitze, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 1354*
Committee Substitute Favorable 5/2/07

Short Title: Motor Vehicle Chop Shop Act. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A MOTOR VEHICLE CHOP SHOP LAW REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF STOLEN OR ALTERED MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Motor Vehicle Chop Shop Act.

"**§ 20-400. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Article to the defined words and phrases and their cognates:

(1) Chop shop. – Any building, lot, or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to do either of the following:

a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part or to prevent the identification of the motor vehicle or motor vehicle part.

b. Sell or dispose of the motor vehicle or motor vehicle part.

(2) Instrumentality. – Motor vehicle, motor vehicle part, other conveyance, tool, implement, or other instrumentality.

(3) Vehicle identification number. – A number, a letter, a character, a datum, a derivative, or a combination thereof, used by the

manufacturer or the Division for the purpose of uniquely identifying a motor vehicle or motor vehicle part.

"**§ 20-401. Chop shop operation unlawful; restitution.**

(a) Criminal Penalties. – It shall be punishable as a Class H felony:

(1) For any person to own, operate, or conduct a chop shop.

(2) For any person to transport a motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop.

(3) For any person to sell, transfer, purchase, or receive a motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.

(4) For any person to buy, dispose of, sell, transfer, or possess a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed. The provisions of this subdivision shall not apply to a motor vehicle scrap processor who, in the normal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part before or during the processing.

(b) Restitution. – In addition to any other punishment provided for by law, any person who violates this section shall be ordered to make restitution to the lawful owner of any stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

Financial loss includes, but is not limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. Lawful owner includes an innocent bona fide purchaser for value of a stolen motor vehicle or stolen motor vehicle part who does not know that the motor vehicle or motor vehicle part is stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser for value who has subrogated the claim.

The court shall determine the amount and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In that case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution."

SECTION 2. G.S. 14-86.1(a) reads as rewritten:

"(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or used by any person in the commission of armed or common-law robbery, or used in violation of G.S. 20-401, or used by any person in the commission of any larceny when the value of the property taken is more than two thousand dollars ($2,000) shall be subject to forfeiture as provided herein, except that:

(1) No conveyance used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;

(2) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;

(3) No conveyance shall be forfeited pursuant to this section unless the violation involved is a felony;

(4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;

(5) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section;

(6) The trial judge in the criminal proceeding which may subject the conveyance to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner the procedures provided in subsection (e) shall apply.

As used in this section concerning a violation of G.S. 20-401, the term "conveyance" includes any "instrumentality" as defined in G.S. 20-400(2)."

SECTION 3. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place wherein or whereon are carried on, conducted, or permitted chop shop activities in violation of G.S. 20-401.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

SECTION 4. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, ~~or~~ two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior occurrences within five years of violation of G.S. 20-401, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued,

begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H **D**

HOUSE BILL 1354*
Committee Substitute Favorable 5/2/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1354-CSRR-26 [v.9]

6/13/2007 5:27:42 PM

Short Title: Motor Vehicle Chop Shop Act. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A MOTOR VEHICLE CHOP SHOP LAW REGARDING THE RECEIVING, POSSESSION, AND DISTRIBUTION OF STOLEN OR ALTERED MOTOR VEHICLES AND MOTOR VEHICLE PARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 14 of the General Statues is amended by adding a new section to read:

"**§ 14-72.7. Chop Shop Activity.**

(a) A person is guilty of a Class H felony if that person knowingly engages in any of the following activities, without regard to the value of the property in question:

(1) Altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or motor vehicle part the person knows to be illegally obtained by theft, fraud, or other illegal means.

(2) Permitting a place to be used for any activity prohibited by this section, where the person has legal possession of the place, and knows that the place is being used for any activity prohibited by this section.

(3) Purchasing, disposing of, selling, transferring, receiving, or possessing a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle, or vehicle part identification number of the vehicle part, has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed.

(4) Purchasing, disposing of, selling, transferring, receiving, or possessing a motor vehicle or motor vehicle part to or from a person engaged in any activity prohibited by this section, knowing that the person is engaging in that activity.

(b) Innocent Activities. -- The provisions of this section shall not apply to either of the following:

(1) Purchasing, disposing of, selling, transferring, receiving, possessing, crushing, or compacting a motor vehicle or motor vehicle part in good faith and without knowledge of previous illegal activity in regard to that vehicle or part, as long as the person engaging in the activity does not remove a vehicle identification number or vehicle part identification number before or during the activity.

(2) Purchasing, disposing of, selling, transferring, receiving, possessing, crushing, or compacting a motor vehicle or motor vehicle part after law enforcement proceedings are completed or as a part of law enforcement proceedings, as long as the activity is not in conflict with law enforcement proceedings.

(c) Civil Penalty. – Any court with jurisdiction of a criminal prosecution under this section may also assess a civil penalty to the district attorney. The clear proceeds of the civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The civil penalty shall not exceed three times the assets obtained by the defendant as a result of violations of this section.

(d) Private Actions. -- Any person aggrieved by a violation of this section may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and any attorney fees as may be provided by law.

(e) Seizure and Forfeiture. – Any instrumentality possessed or used to engage in the activities prohibited by this section are subject to the seizure and forfeiture provisions of G.S. 14-86.1. The real property of a place used to engage in the activities prohibited by this section is subject to the abatement and forfeiture provisions of Chapter 19 of the General Statutes.

(f) Definitions. — For the purposes of this section, the following definitions apply:

(1) Instrumentality. – Motor vehicle, motor vehicle part, other conveyance, tool, implement, or equipment possessed or used in the activities prohibited under this section.

(2) Vehicle identification number. – A number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer or the Division of Motor Vehicles for the purpose of uniquely identifying a motor vehicle.

(3) Vehicle part identification number. -- A number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer for the purpose of uniquely identifying a motor vehicle part."

SECTION 2. G.S. 14-86.1(a) reads as rewritten:

"(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or

used by any person in the commission of armed or common-law robbery, or used in violation of G.S. 14-72.7, or used by any person in the commission of any larceny when the value of the property taken is more than two thousand dollars ($2,000) shall be subject to forfeiture as provided herein, except that:

(1) No conveyance used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;

(2) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;

(3) No conveyance shall be forfeited pursuant to this section unless the violation involved is a felony;

(4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;

(5) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section;

(6) The trial judge in the criminal proceeding which may subject the conveyance to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner the procedures provided in subsection (e) shall apply.

As used in this section concerning a violation of G.S. 14-72.7, the term "conveyance" includes any "instrumentality" as defined in that section."

SECTION 3. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conducting, or engaging in any activities in violation of G.S. 14-72.7.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

SECTION 4. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, ~~or~~ two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of

the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 1354: Motor Vehicle Chop Shop Act

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 13, 2007
Introduced by:	Reps. Tillis, Saunders, R. Warren, Kiser	**Summary by:**	William R. Gilkeson
Version:	PCS to Second Edition H1354-CSRR-26		Committee Counsel

SUMMARY: ***This PCS for House Bill 1354 creates Class H felony penalties for several activities involving the alteration for resale of stolen vehicles, including permitting a place one controls to be used for those activities. The bill also provides for civil penalties and private civil actions as a result of such activities. It provides for forfeiture of property used in such activity, and the abatement of a place where such activity goes on as a nuisance.***

[As introduced, this bill was identical to S1357, as introduced by Sen. Graham, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: Currently, several criminal statutes address larceny of vehicles, possessing stolen vehicles, or receiving stolen vehicles, and altering vehicle identification numbers (VINs).

Offense	GS Citation	Misdemeanor?	Felony?
Larceny	14-72 and 14-72.2	Class 1 misdemeanor if $1,000 or less	Class H felony if more than $1,000
Possession of Stolen Property	14-72 and 14-71.1	Class 1 misdemeanor if $1,000 or less – 14-72	Class H felony if more than $1,000 – 14.71-1
Receiving Stolen Property	14-72 and 14-71	Class 1 misdemeanor if $1,000 or less – 14-72	Class H felony if more than $1,000 – 14-71
Possession of Stolen Vehicle	20-106		Class H felony, regardless of value, if vehicle is whole
Receiving Stolen Vehicle	20-106		Class H felony , regardless of value, if vehicle is whole.
Transferring Stolen Vehicle	20-106		Class H felony, regardless of value, if vehicle is whole.
Altering VIN number	20-109		Class I felony.
Altering Serial Number of Personal Property	14-160.1	Class 1 misdemeanor	

BILL ANALYSIS:

Crimes Related to a Chop Shop. The bill makes it a Class H felony (presumptive 5-6 months community/intermediate/active sentence) knowingly to do any of the following, regardless of the value of the property involved:

1. Altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or motor vehicle part the person knows to be illegally obtained by theft, fraud, or other illegal means.
2. Permitting a place to be used for any activity prohibited by this section, where the person has legal possession of the place, and knows that the place is being used for any activity prohibited by the bill.

3. Purchasing, disposing of, selling, transferring, receiving, or possessing a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle, or vehicle part identification number of the vehicle part, has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed.
4. Purchasing, disposing of, selling, transferring, receiving, or possessing a motor vehicle or motor vehicle part to or from a person engaged in any activity prohibited by the bill, knowing that the person is engaging in that activity.

Civil Penalties. The bill gives the court with jurisdiction over a criminal case under the bill the authority to assess civil penalties up to three times the assets the defendant obtained as a result of violations.

Private Actions. The bill provides for a civil action that can be brought by a person aggrieve by a violation of the bill. A full range of remedies would be available, including punitive damages.

Forfeiture. The bill amends the following current statutes to include chop shop operations as justification for seizure and forfeiture of property:

- G.S. 14-86.1 – forfeiture of vehicles, parts, and instrumentalities.
- Chapter 19 (Nuisances) – forfeiture of real property. The addition of the chop shop provisions to this chapter also allows the use of this Chapter's procedures to abate the nuisance.

EFFECTIVE DATE: December 1, 2007.

BACKGROUND: The bill is patterned after a law in South Carolina. Originally, mirroring the SC law, this bill defined a "chop shop," and made it a crime to own or operate one. This PCS removes the definition of "chop shop," instead making it a crime to permit a place to be used for specified activities. The PCS also makes more specific the mental element of "knowing" that is necessary to prove the crimes. And the PCS provides for civil penalties and private actions.

H1354e2-SMRR-CSRR-26

Attachment 9

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1354 DATE 6/19

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Randy

1 moves to amend the bill on page 2, line 15

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the term "to the district

4 attorney".

5

6

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10

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SIGNED Jay Rand

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment 10

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/19

S. B. No. 1354 Amendment No. 2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Clodfelter

Sen.)

1 moves to amend the bill on page 1, line 15

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 inserting the following between "person" and "has":

5 _____

6 "either owns or".

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Daniel G Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 47*

Committee Substitute Favorable 2/28/07

Third Edition Engrossed 5/23/07

Short Title: Violate Order/Possess Deadly Weapon Felony. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A FELONY OFFENSE FOR PERSONS WHO KNOWINGLY VIOLATE A DOMESTIC VIOLENCE PROTECTIVE ORDER WHILE ARMED WITH A DEADLY WEAPON AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective order.**

(a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to a person who is charged with

or convicted of a Class A or B1 felony or to a person charged under subsection (f) or subsection (g) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of three offenses under this Chapter, shall be guilty of a Class H felony.

(g) Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about their person or within close proximity to their person, knowingly violates a valid protective order as provided in subsection (a) of this section by failing to stay away from a place, or a person, as so directed under the terms of the order, shall be guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 47:
Violate Order/Possess Deadly Weapon Felony

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 13, 2007
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield, Jeffus	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	Third Edition		

SUMMARY: House Bill 47 creates a felony offense for violation of a domestic violence protective order while armed with a deadly weapon, as recommended by the Joint Legislative Committee on Domestic Violence. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

[As introduced, this bill was identical to S10, as introduced by Sen. Boseman, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: G.S. 50B-4.1 currently provides the following penalties for violating a domestic violence protective order (50B order):

- General violation of a 50B order – Class A1 misdemeanor.
- Violation of a 50B order with at least 3 prior convictions of violation of a 50B order – Class H felony.
- Commission of a felony which violates a 50B order – punishment as a felony one class higher.

BILL ANALYSIS: The act would make it a Class I felony for a person subject to a 50B order to possess a deadly weapon in violation of a provision of the order prohibiting the person from (i) being at a specified place, or (ii) near a person protected by the order. The "possession" element of the offense requires the deadly weapon to be on or about, or in close proximity to, the violator.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Summary contribution by Susan Sitze, Staff Attorney.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

June 19, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Tilley	MWC
Saurabh Desai	Poyner Spruill
Danielle Barbour	Poyner Spruill
Chad Essick	Poyner + Spruill
Dawn Hoar	S.H.
Sarah Price	BOA
Connie Wadsworth	SSJ
BRUCE THOMPSON	PARKER POE
Steve Wall	DENR
Becki Gray	John Locke Foundation
Patrick Buffkin	Nelson Mullins

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY COMMITTEE
2007-2008 SESSION
Senator Martin L. Nesbitt, Chairman

Dan Clodfelter, Vice-Chairman
Room 408 LOB – 7158331

Sen. R. C. Soles Vice-Chairman
Rm 2022 - 733-5963

Sen. Phil Berger Vice-Chairman
Rm 1026 – 715-2525

Senator Charlie Albertson
525 LOB -733-5705

Sen. Julia Boseman
Rm 309 LOB – 715-2525

Sen. Andrew Brock
Rm 1119 – 715-0690

Sen. Harry Brown
620 LOB - 715-3034

Sen. Pete Brunstetter
Rm 1119 – 733-7850

Sen. Janet Cowell
Rm 1028 – 715-6400

Sen. Malcolm Graham
Rm 620 LOB – 733-5650

Sen. David Hoyle
300 A LOB - 733-5734

Sen. Clark Jenkins
308 LOB - 715-3040

Sen. Ellie Kinnaird
Rm 2115 – 733-5804

Sen. Vernon Malone
Rm 313 LOB – 733-5880

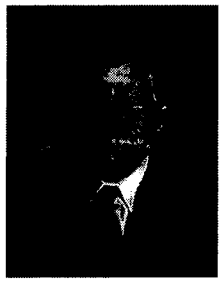
Sen. Floyd McKissick
Rm 621 LOB 733-4599

Sen. Tony Rand
300 C LOB - 733-9892

Committee Staff:
Erika Churchill
Bill Gilkeson
Kara McCraw
Hal Pell
Denise Huntley, Research Assistant
733-2578
Jan Lee, Committee Assistant
715-3001

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I COMMITTEE
2007-2008 SESSION



Senator Martin Nesbitt
Chairman



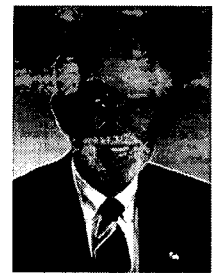
Senator Phil Berger
Vice Chairman



Senator Dan Clodfelter
Vice Chairman



Senator R. C. Soles
Vice Chairman



Senator Charlie Albertson
Member



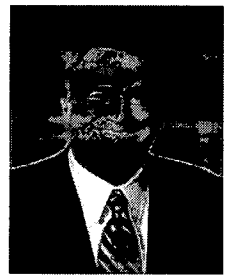
Senator Julia Boseman



Senator Andrew Brock



Senator Harry Brown



Senator Pete Brunstetter



Senator Janet Cowell



Senator Malcolm Graham



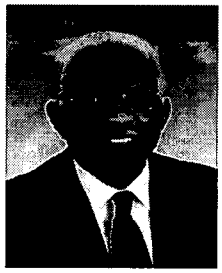
Senator David Hoyle



Senator Clark Jenkins



Senator Ellie Kinnaird



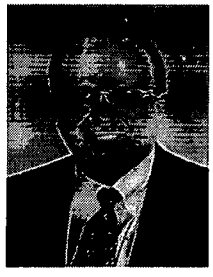
Senator Vernon Malone



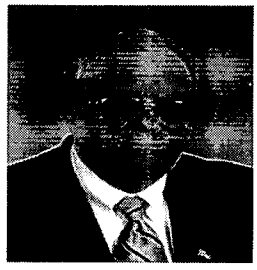
Senator Floyd McKissick



Senator Tony Rand



Senator Richard Stevens



Senator Jerry Tillman

SENATE JUDICIARY I COMMITTEE
(Civil)
Minutes
June 21, 2007
10:00 a.m.

The Senate Judiciary I (Civil) committee met at 10 a.m. on June 21, 2007 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Vice Chair R. C. Soles, Member Charlie Albertson, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Malcolm Graham, Sen. David Hoyle, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Tony Rand, Sen. Richard Stevens and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:06 a.m. and told the committee that House Bill 21 would be pulled from the meeting agenda due to the absence of the bill sponsor. Chairman Nesbitt then appointed a subcommittee for House Bill 1708, which includes Sen. Clodfelter to chair the subcommittee, Sen. Nesbitt, Sen. Soles and Sen. Stevens. He then told the committee that they would work through two bills before taking up the Street Gang Prevention Act again.

Chairman Nesbitt moved to House Bill 47, a bill changing criminal penalties for possession of a deadly weapon while under a protective order. A Proposed Committee Substitute was distributed to committee members and adopted unanimously through a motion by Sen. Boseman. Chairman Nesbitt called on Staff Attorney Hal Pell to explain the bill. Mr. Pell told the committee that the current PCS changes felony penalties from a Class I felony to a Class H felony and that the change would allow the court to impose active time.

After little discussion, Sen. Boseman moved for favorable report for the committee substitute, unfavorable to the original and the bill passed committee through unanimous vote.

Chairman Nesbitt then called on Rep. Hill for House Bill 590, a bill limiting liability at agricultural fairs, and noted that the bill was taken out of chamber in a previous session and returned to committee. Sen. Albertson told the committee that he sponsored a companion bill. Discussion began regarding the bill and Sen. Soles asked if the bill was created because of an illness caught among children at a state fair. Sen. Albertson replied that a child became ill and noted that illness from a fair is very rare. Chairman Nesbitt asked the committee if there was opposition to the bill among members. Sen. Kinnaird commented that she was satisfied with the bill. Chairman Nesbitt then called on speakers from outside the committee and recognized Paul Pulley with the North Carolina Academy of Trial Lawyers. Mr. Pulley told the committee that lawyers handling negligent claims from illnesses allegedly caught at the North Carolina State Fair did not have a problem with the bill.

Sen. Albertson motioned for favorable report for the bill and the bill passed committee unanimously.

Chairman Nesbitt recognized Sen. Graham for Senate Bill 1358, the Street Gang Prevention Act. As a Proposed Committee Substitute was passed to members, Chairman Nesbitt told the committee that a great deal of work had gone into the revised bill. Sen. Graham moved to adopt the PCS, and the PCS was adopted by unanimous vote.

Sen. Graham explained revisions to the bill, including changing an appropriations amount from $10 million to $3 million for prevention programs. He then offered two amendments and explained them to the Committee.

Chairman Nesbitt called on Mr. Pell to explain changes to the bill. A difference between expungement ages between the House and Senate bills was noted. Discussion continued with senators noting a potential crisis with the increases in gang violence. The bill was then pulled from the agenda to be revisited at another meeting.

Chairman Nesbitt recognized Rep. Ray, sponsor of House Bill 29, a bill clarifying procedures for monitoring sex offenders. A Proposed Committee Substitute was distributed to member and adopted by unanimous vote after Sen. Rand moved for its adoption. Little discussion ensued and Sen. Rand motioned for favorable report. The motion passed unanimously.

Copies of HB 21, HB 47, a Proposed Committee Substitute for HB 47, a Bill Analysis for the PCS for HB 47, HB 590, a Bill Analysis for HB 590, Senate Bill 1358, a Proposed Committee Substitute for SB 1358, a Bill Analysis for the PCS for SB 1358, Graham Amendment 1, Graham Amendment 2, House Bill 29, a Proposed Committee Substitute for HB 29, and a Bill Analysis for HB 29 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 21

Short Title:	Recovery of Costs in Civil Cases.	(Public)
Sponsors:	Representatives Glazier, Ross, Jones, Spear (Primary Sponsors); Alexander, Barnhart, Current, Farmer-Butterfield, Folwell, Harrison, Lewis, Lucas, McGee, Samuelson, Stam, Tillis, Underhill, and Wray.	
Referred to:	Rules, Calendar, and Operations of the House.	

January 29, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-19 reads as rewritten:

"**§ 6-19. When costs allowed as of course to defendant.**

Costs shall be allowed as of course to the defendant, in the actions mentioned in ~~the preceding section~~ G.S. 6-18 unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them."

SECTION 2. G.S. 6-20 reads as rewritten:

"**§ 6-20. Costs allowed or not, in discretion of court.**

~~In other actions, costs~~ Costs may be allowed ~~or not,~~ in the discretion of the court ~~court, unless otherwise provided by law.~~subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), except as otherwise provided by the General Statutes."

SECTION 3. G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are ~~also~~ assessable or recoverable, as the case may ~~be:~~ be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

(1) Witness fees, as provided by law.

(2) Jail fees, as provided by law.

(3) Counsel fees, as provided by law.

(4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of mediators appointed by the court or agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

(10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the cost of deposition transcripts.

(11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings."

SECTION 4. This act becomes effective May 1, 2007, and applies to all motions for costs filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 47*

Committee Substitute Favorable 2/28/07

Third Edition Engrossed 5/23/07

Short Title: Violate Order/Possess Deadly Weapon Felony. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A FELONY OFFENSE FOR PERSONS WHO KNOWINGLY VIOLATE A DOMESTIC VIOLENCE PROTECTIVE ORDER WHILE ARMED WITH A DEADLY WEAPON AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective order.**

(a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to a person who is charged with

or convicted of a Class A or B1 felony or to a person charged under subsection (f) or subsection (g) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of three offenses under this Chapter, shall be guilty of a Class H felony.

(g) Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about their person or within close proximity to their person, knowingly violates a valid protective order as provided in subsection (a) of this section by failing to stay away from a place, or a person, as so directed under the terms of the order, shall be guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 47:
Violate Order/Possess Deadly Weapon Felony

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 13, 2007
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield, Jeffus	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	Third Edition		

SUMMARY: House Bill 47 creates a felony offense for violation of a domestic violence protective order while armed with a deadly weapon, as recommended by the Joint Legislative Committee on Domestic Violence. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

[As introduced, this bill was identical to S10, as introduced by Sen. Boseman, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: G.S. 50B-4.1 currently provides the following penalties for violating a domestic violence protective order (50B order):

- General violation of a 50B order – Class A1 misdemeanor.
- Violation of a 50B order with at least 3 prior convictions of violation of a 50B order – Class H felony.
- Commission of a felony which violates a 50B order – punishment as a felony one class higher.

BILL ANALYSIS: The act would make it a Class I felony for a person subject to a 50B order to possess a deadly weapon in violation of a provision of the order prohibiting the person from (i) being at a specified place, or (ii) near a person protected by the order. The "possession" element of the offense requires the deadly weapon to be on or about, or in close proximity to, the violator.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Summary contribution by Susan Sitze, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 47*
Committee Substitute Favorable 2/28/07
Third Edition Engrossed 5/23/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H47-CSRK-48 [v.1]

6/20/2007 3:28:00 PM

Short Title: Violate Order/Possess Deadly Weapon Felony. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A FELONY OFFENSE FOR PERSONS WHO KNOWINGLY VIOLATE A DOMESTIC VIOLENCE PROTECTIVE ORDER WHILE ARMED WITH A DEADLY WEAPON AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective order.**

(a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this

section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to a person who is charged with or convicted of a Class A or B1 felony or to a person charged under subsection (f) or subsection (g) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of three offenses under this Chapter, shall be guilty of a Class H felony.

(g) Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about their person or within close proximity to their person, knowingly violates a valid protective order as provided in subsection (a) of this section by failing to stay away from a place, or a person, as so directed under the terms of the order, shall be guilty of a Class H felony."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 47:
Violate Order/Possess Deadly Weapon Felony

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 19, 2007
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield, Jeffus	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	PCS to Third Edition		

SUMMARY: House Bill 47 creates a felony offense for violation of a domestic violence protective order while armed with a deadly weapon, as recommended by the Joint Legislative Committee on Domestic Violence. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

[As introduced, this bill was identical to S10, as introduced by Sen. Boseman, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW

- General violation of a 50B order – Class A1 misdemeanor.
- Violation of a 50B order with at least 3 prior convictions of violation of a 50B order – Class H felony.
- Commission of a felony which violates a 50B order – punishment as a felony one class higher.
- Possess a firearm after being ordered not to as part of a 50B order – Class H felony.

BILL ANALYSIS: The proposed committee substitute would make it a Class H felony for a person subject to a 50B order to possess a deadly weapon in violation of a provision of the order prohibiting the person from (i) being at a specified place, or (ii) near a person protected by the order. The "possession" element of the offense requires the deadly weapon to be on or about, or in close proximity to, the violator.

[Note: The PCS only makes one change from the House bill; it changes the penalty from a Class I to a Class H felony.]

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Summary contribution by Susan Sitze, Staff Attorney.

H0047e3-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 590*
Committee Substitute Favorable 3/26/07

Short Title: Limit Liability at Agricultural Fairs.-AB (Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF ANIMAL EXHIBITIONS AT AGRICULTURAL FAIRS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 99E-30(1) reads as rewritten:

"(1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. "Agritourism activity" includes an activity involving any animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3."

SECTION 2. This act is effective when it becomes law and applies to causes of action arising on or after that date.

HOUSE BILL 590:
Limit Liability at Agricultural Fairs.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 11, 2007
Introduced by:	Rep. Hill	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	Second Edition		

SUMMARY: ***House Bill 590 would limit the liability of operators of agricultural fairs for activities involving animal exhibitions at an agricultural fair licensed by the Commissioner of Agriculture.***

[As introduced, this bill was identical to S717, as introduced by Sen. Albertson, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW:

Article 4 of Chapter 99E of the General Statutes provides a limitation on liability for agritourism professionals engaged in the business of providing agritourism activities. Agritourism activities are defined as any activity on a farm or ranch that allows the general public, for recreational, educational or entertainment purposes, to view or enjoy rural activities including farming, ranching, historic attractions/activities, pick your own activities and others.

If a warning is posted, consistent with the requirements of the Article, an agritourism professional will not be held liable for the injury or death of a participant resulting from the inherent risks of participating in agritourism activities. A copy of the warning is printed on the reverse of this summary.

The limitation on liability does not apply if the agritourism professional does either of the following:

1. Acts negligently or with willful or wanton disregard for the safety of the participant and that act is the proximate cause of the injury
2. Knew or should have known of any of the following and did not make that danger known to the participant :
    a. A dangerous condition on the land, facilities or equipment used in the activity.
    b. The dangerous propensity of a particular animal.

G.S. 106-520.3 authorizes the Commissioner of Agriculture, with the advice and approval of the Board of Agriculture, to make rules regarding the classification, operation, and licensing of fairs. "Fairs" are defined to mean bona fide exhibitions designed, arranged, and operated to promote agriculture, horticulture, livestock, poultry, dairy, mechanical fabrics, domestic economy, 4H, and FFA activities, by offering premiums and awards for exhibits.

BILL ANALYSIS: The proposed committee substitute expands the definition of agritourism activity to include any activity involving an animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture under G.S. 106-520.3.

EFFECTIVE DATE: Effective when it becomes law, and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1358

Short Title:	Street Gang Prevention Act.	(Public)
Sponsors:	Senators Graham; Albertson, Atwater, Berger of Franklin, Clodfelter, Cowell, Dannelly, Foriest, Jenkins, Jones, Malone, Pittenger, Shaw, Snow, Swindell, Tillman, and Weinstein.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.

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 13A.

"North Carolina Street Gang Prevention Act.

"**§ 14-50.15. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Prevention Act".

"**§ 14-50.16. Legislative findings and intent.**

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Article to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of North Carolina is in a state of crisis that has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The General Assembly finds that there are criminal street gangs operating in North Carolina and that the number of gang-related murders is increasing. It is the intent of the General Assembly in enacting this Article to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which together are the chief source of terror created by street gangs.

(d) The General Assembly finds that prevention of violent gang activity and efforts to prevent violent gangs' ability to recruit additional members are effective means of addressing the issues created by gangs in this State.

(e) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

"**§ 14-50.17. Definitions.**

The following definitions apply in this Article:

(1) 'Criminal street gang' or '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 one or more felony offenses, or delinquent acts that would be felonies if committed by an adult, which has a common name, common identifying sign or symbol, and three or more members individually or collectively engaged in or who have engaged in criminal gang activity.

(2) 'Pattern of criminal gang activity' means the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the following offenses, provided that at least one of these offenses occurred after December 1, 2007, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity:

a. Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).

b. Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

(3) 'Criminal street gang member' means a person to whom two or more of the following criteria apply:

a. Admits to criminal street gang membership;

b. Is identified as a criminal street gang member by a documented reliable informant;

c. Resides in or frequents a particular criminal street gang's area and adopts its style of dress, its use of hand signals or its tattoos and associates with known criminal street gang members;

d. Has been arrested more than once in the company of known criminal street gang members for offenses which are consistent with usual criminal street gang activity;
e. Is identified as a criminal street gang member by physical evidence, such as photographs or other documentation;
f. Has been stopped in the company of known criminal street gang members four or more times;
g. Has been identified as a criminal street gang member by other law enforcement agencies; or
h. Is identified as a criminal street gang member by a parent or guardian.

"**§ 14-50.18. Participation in criminal street gang activity prohibited.**

(a) It is unlawful for any person employed by or associated with a criminal street gang to conduct or participate in the criminal street gang through a pattern of criminal gang activity.

(b) It is unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(c) It is unlawful for any person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity.

(d) It is unlawful for any person to cause, encourage, solicit, or coerce another to participate in a criminal street gang.

(e) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

(f) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

(g) Any person who violates this section shall be punished as follows:

(1) A person who violates subsection (a) or (b) of this section shall, in addition to any other penalty imposed by law, be punished as a Class H felon.

(2) A person who violates subsection (a), (b), (d), (e), or (f) of this section may, if the person also violates subsection (c) of this section in the same course of conduct, in addition to any other penalty provided by law, be punished by imprisonment for an additional 10 years which shall be served consecutively to any other sentence imposed on the person by law.

(3) A person who violates subsection (d), (e), or (f) of this section shall, in addition to any other penalty provided by law, be punished as a Class H felon.

(h) Any crime committed in violation of this section shall be considered a separate offense.

"§ 14-50.19. Enhanced offense for criminal gang activity.

Unless a different classification is expressly stated, a person who is convicted of an offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this section.

This section does not apply to the offenses set forth in G.S. 14-50.18.

"§ 14-50.20. Reports of disposition; criminal street gang activity.

When a defendant is found guilty of an offense, the presiding judge shall determine whether the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang. If the judge determines that the offense so qualifies, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal street gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes the court's determination.

"§ 14-50.21. Contraband, seizure, and forfeiture.

(a) All of the following are declared to be contraband, and no person shall have a property interest in them:

(1) All property that is directly or indirectly used or intended for use in any manner to facilitate a violation of this Article.

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this Article.

(b) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

(c) Within 60 days of the date of the seizure of contraband pursuant to this section, the district attorney or the Attorney General shall initiate a forfeiture proceeding as provided in G.S. 14-2.3.

"§ 14-50.22. Local ordinances not preempted by State law.

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

"§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement.

Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes. If the property is owned by a person who is not a member of the

criminal street gang, this section shall apply only if the person has knowledge of the criminal gang activity.

"**§ 14-50.24. Matters proved in criminal trial court.**

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct.

"**§ 14-50.25. Applicability to juveniles under the age of sixteen.**

The provisions of this Article shall not apply to juveniles under the age of 16."

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-34.9. Discharging a firearm from within an enclosure.**

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm, as a part of a pattern of criminal gang activity, from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

SECTION 3. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and

not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.17;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.17, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

~~Such person~~ Persons who are considered for bond under the provisions of subsections (d) and (e) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 4. G.S. 15A-1340.16(d) reads as rewritten:

"(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~~G.S. 15A-1340.16A, 15A-1340.16B, or 14-50.19 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."

SECTION 5. Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang, and the defendant possessed, displayed, or discharged a firearm during the commission of the felony.**

(a) Notwithstanding G.S. 15A-1340.16A, a person who is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang as defined in G.S. 14-50.17, and who possessed, displayed, or discharged a firearm during the commission of the felony shall be punished pursuant to one of the following subdivisions:

(1) If the person possessed a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months.

(2) If the person displayed a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 84 months.

(3) If the person discharged a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 120 months.

(b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by possessing, displaying, or discharging the firearm. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(d) The enhanced punishment provided by this section for the acts of possessing or displaying a firearm applies even if the firearm is incapable of firing.

(e) The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the defendant."

SECTION 6. The Revisor of Statutes shall recodify the existing G.S. 15A-1340.16B and subsequent statutes accordingly.

SECTION 7. G.S. 15A-1340.16A(c) reads as rewritten:

"(c) ~~If~~ Except as provided in G.S. 15A-1340.16B, if a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm and (ii) the person actually possessed the firearm about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1)."

SECTION 8. There is appropriated to the Department of Juvenile Justice and Delinquency Prevention the sum of ten million dollars ($10,000,000) for the 2007-2008 fiscal year to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention programs.

The Department of Juvenile Justice and Delinquency Prevention, in conjunction with the Governor's Crime Commission, shall develop the criteria for eligibility for these funds. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile or adult programs that meet the criteria established by the Department of Juvenile Justice and Delinquency Prevention and the Governor's Crime Commission.

The Department of Juvenile Justice and Delinquency Prevention shall report on the uses of these funds no later than April 1, 2008, to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division.

SECTION 9. Section 8 of this act becomes effective July 1, 2007. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1358
PROPOSED COMMITTEE SUBSTITUTE S1358-CSRK-43 [v.8]

6/19/2007 9:21:42 AM

Short Title: Street Gang Prevention Act. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.

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 13A.

"North Carolina Street Gang Prevention Act.

"**§ 14-50.15. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Prevention Act".

"**§ 14-50.16. Legislative findings and intent.**

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Article to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of North Carolina is in a state of crisis that has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The General Assembly finds that there are criminal street gangs operating in North Carolina and that the number of gang-related murders is increasing. It is the intent

of the General Assembly in enacting this Article to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which together are the chief source of terror created by street gangs.

(d) The General Assembly finds that prevention of violent gang activity and efforts to prevent violent gangs' ability to recruit additional members are effective means of addressing the issues created by gangs in this State.

(e) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

"§ 14-50.17. Definitions.

The following definitions apply in this Article:

(1) 'Criminal street gang' or '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 one or more felony offenses, or delinquent acts that would be felonies if committed by an adult, which has a common name, common identifying sign or symbol, and has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity.

(2) 'Criminal street gang activity' means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts which would be chargeable by indictment if such act or acts were accompanied by the necessary mens rea or criminal intent under the following laws of this State:

a. Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).

b. Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

(3) 'Pattern of criminal street gang activity' means engaging in at least two incidents of criminal street gang activity that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2007, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity.

"§ 14-50.18. Participation in criminal street gang activity prohibited.

(a) It is unlawful for any person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity.

(b) It is unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(c) It is unlawful for any person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity.

(d) It is unlawful for any person to cause, encourage, solicit, or coerce another to participate in criminal street gang activity.

(e) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

(f) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

(g) Any person who violates this section shall be guilty of a Class H felony.

(h) Any crime committed in violation of this section shall be considered a separate offense.

"**§ 14-50.19. Enhanced offense for criminal gang activity.**

A person who is convicted of a misdemeanor offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this section.

"**§ 14-50.20. Reports of disposition; criminal street gang activity.**

When a defendant is found guilty of a criminal offense other than an offense under G.S. 14-50.18 or G.S. 14-50.19, the presiding judge shall determine whether the offense involved criminal street gang activity. If the judge so determines, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal street gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes a notation of the court's determination.

"**§ 14-50.21. Contraband, seizure, and forfeiture.**

(a) All property of every kind used or intended for use in the course of, derived from, or realized through criminal street gang activity or a pattern of criminal street gang activity is subject to forfeiture to the State.

(b) Within 60 days of the date of the seizure of contraband pursuant to this section, the district attorney or the Attorney General shall initiate a forfeiture proceeding as provided in G.S. 14-2.3.

(c) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

"**§ 14-50.22. Local ordinances not preempted by State law.**

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this

Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

"§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement.

Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes. This section shall not apply if the property owner was without knowledge that the property was being used for criminal gang activity.

"§ 14-50.24. Matters proved in criminal trial court.

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct.

"§ 14-50.25. Applicability to juveniles under the age of sixteen.

The provisions of this Article shall not apply to juveniles under the age of 16."

"§ 14-50.26. Conditional discharge and expunction of records for first offense.

(a) A person who is convicted of an offense under G.S. 14-50.18 or G.S. 14-50.19, and who

(1) has not been previously convicted of any criminal offense, and

(2) was age sixteen or seventeen at the time of the offense

may apply to the court for a deferral of proceedings without entry of judgment, and for placement on supervised probation upon such reasonable terms and conditions as the court may require. If the court, in its discretion, defers proceedings pursuant to this section, it shall place the defendant on supervised probation for not less than one year, in addition to any other conditions. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no previous criminal convictions.

(b) Upon fulfillment of the terms and conditions of the probation provided for in subsection (a) of this section, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

(c) Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

(d) Upon violation of a term or condition of the probation provided for in subsection (a), the court may enter an adjudication of guilt and proceed as otherwise provided.

(e) Upon discharge and dismissal pursuant to subsection (b) of this section, the person may apply for an order to expunge the complete record of the proceedings

resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 90-96(b), (c), and (f).

(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

(g) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 2. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.17;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.17, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

~~Such person~~ Persons who are considered for bond under the provisions of subsections (d) and (e) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 3. There is appropriated to the Department of Juvenile Justice and Delinquency Prevention the sum of three million dollars ($3,000,000) for the 2007-2008 fiscal year to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention programs.

The Department of Juvenile Justice and Delinquency Prevention, in conjunction with the Governor's Crime Commission, shall develop the criteria for eligibility for these funds. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile or adult programs that meet the criteria established by the Department of Juvenile Justice and Delinquency Prevention and the Governor's Crime Commission.

The Department of Juvenile Justice and Delinquency Prevention shall report on the uses of these funds no later than April 1, 2008, to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division.

SECTION 4. Section 3 of this act becomes effective July 1, 2007. This section of the act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1358: Street Gang Prevention Act

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	June 15, 2007
Introduced by:	Sen. Graham	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: ***This act would create a new Article in the criminal law statutes directed towards participation in street gang activities. The provisions include enhancement of penalties for felonies that are related to street gangs. The appropriation in the act is effective July 1, 2007. The remainder is effective on December 1, 2007, and applies to offenses committed on or after that date.***

BILL ANALYSIS:

Section 1: The act defines "criminal street gang" and "pattern of criminal gang activity, and does not apply to minors under age sixteen years old. Generally, it involves the commission of offenses under the Controlled Substances Act, or designated offenses under the criminal law statutes. The criminal prohibitions include:

- Employment or association with a criminal street gang.
- Acquiring or maintaining real or personal property (including money) derived from gang activity.
- Acting as an organizer or supervisor with a street gang, to include conspiring to engage in a pattern of gang activity.
- Soliciting or encouraging another to participate in a street gang.
- Punish or conspire to punish or retaliate against someone who withdraws from a street gang.

Any violation is a Class H felony. Any misdemeanor offense that is committed for the benefit of, direction of, or in association with a street gang is elevated one class higher that its normal designation. The bill also contains provisions for the seizure of contraband, and the designation of real property as a public nuisance if used in conjunction with the conduct of criminal street gang activity.

Offenders who are 16 or 17 at the time of the offense, and have no prior criminal convictions, would be eligible for discharge and dismissal of the charge. If the court defers proceedings, it must put the offender on supervision for a minimum of one year, along with any other conditions. Upon successful completion, the conviction would be discharged. The offender could apply for expunction of the court record.

Section 2: The act provides that it is a rebuttable presumption that no condition of release will assure the appearance of a person (1) charged with a violation of an offense committed on behalf of a street gang; (2) who was on pretrial release for another offense; and (3) who has a prior conviction of an offense under the criminal street gang statutes within the past five years, or the defendant's release for the offense, whichever is later. Persons considered for bond under the section may only be released by a judge upon a finding that there is a reasonable assurance that the person will appear and release does not impose an unreasonable risk of harm to the community.

(over)

Section 3: The act provides for an appropriation of ten million dollars ($3,000,000) to the Department of Juvenile Justice and Delinquency Prevention for the 2007-2008 fiscal year. The money is to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention. The grant criteria include a 25% matching requirement, with one-half as in-kind contributions. The Department shall report to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, and to the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division, no later than April 1, 2008 on the use of the funds.

EFFECTIVE DATE: The appropriation is effective July 1, 2007. The remainder of the act is effective for offenses occurring on or after December 1, 2007.

Attachment 10

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 1358

COMMITTEE SUBSTITUTE ✓

DATE 6/21/07

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

Rep.)
~~Sen.~~) Graham

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

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 section from a vehicle, or into

5 an occupied dwelling or into

6 any occupied vehicle, aircraft,

7 watercraft, or other conveyance

8 that is in operation is

9 guilty of a "Class D felony."

10

11

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment 11

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/21/07

S. B. No. 1358 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)) Graham
Sen.)

moves to amend the bill on page 3, line 18

( ) WHICH CHANGES THE TITLE

by rewriting the Line to read:

"(g) Any person who violates subsection (c) of this section shall be guilty of A CLASS F felony. Any person violating any other subsection of this section shall be guilty of A CLASS H felony."

AND on page 5, between lines 9 and 10, by inserting the following:

"SECTION 1A. G.S. 14-34.1(b) reads as rewritten:

"(b) A person who willfully or wantonly discharges a weapon described in subsection (a) of this

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 29
Committee Substitute Favorable 4/16/07

Short Title: Sex Offender GPS/DOC Requests. (Public)

Sponsors:

Referred to:

January 30, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR SATELLITE-BASED MONITORING OF SEX OFFENDERS AND TO MAKE OTHER CHANGES TO THE SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. 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. ~~An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.~~

(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) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. ~~An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the~~

~~court and is not subject to a requirement of lifetime satellite-based 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."

SECTION 2. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, or has committed an aggravated offense, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 3. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the Department shall schedule a hearing in the court of the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, or (iii) the conviction offense was an aggravated offense, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 4. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.40C. Requirements of enrollment.

(a) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives an active sentence shall be enrolled and receive the appropriate equipment immediately upon the offender's release from the Division of Prisons.

(b) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives an intermediate punishment shall, immediately upon sentencing, report to the Division of Community Corrections for enrollment in the satellite-based monitoring program, and, if necessary, shall return at any time designated by that Division to receive the appropriate equipment. If the intermediate sentence includes a required period of imprisonment, the offender shall not be required to be enrolled in the satellite-based monitoring program during the period of imprisonment.

(c) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives a community punishment shall, immediately upon sentencing, report to the Division of Community Corrections for enrollment in the satellite-based monitoring program, and, if necessary, shall return at any time designated by that Division to receive the appropriate equipment."

SECTION 5. G.S. 14-208.42 reads as rewritten:

"§ 14-208.42. ~~Lifetime registration offenders~~ Offenders required to submit to satellite-based monitoring ~~for life and to continue on unsupervised probation~~required to cooperate with Department upon completion of sentence.

Notwithstanding any other provision of law, when an offender is required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B, ~~the court sentences an offender who is in the category described by G.S. 14-208.40(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender,~~ upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, the offender shall continue to be enrolled in the satellite-based monitoring program for ~~the offender's life and be placed on unsupervised probation~~the period required by G.S. 14-208.40A or G.S. 14-208.40B unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.43.

The Department shall have the authority to have contact with the offender at the offender's residence or to require the offender to appear at a specific location as needed

for the purpose of enrollment, to receive monitoring equipment, to have equipment examined or maintained, and for any other purpose necessary to complete the requirements of the satellite-based monitoring program. The offender shall cooperate with the Department and the requirements of the satellite-based monitoring program until the offender's requirement to enroll is terminated and the offender has returned all monitoring equipment to the Department."

SECTION 6. G.S. 14-208.44 reads as rewritten:

"**§ 14-208.44. Failure to enroll; tampering with device.**

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class F felony.

(b) Any person who intentionally tampers with, removes, ~~or vandalizes~~vandalizes, or otherwise interferes with the proper functioning of a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class E felony.

(c) Any person required to enroll in a satellite-based monitoring program who fails to provide necessary information to the Department, or fails to cooperate with the Department's guidelines and regulations for the program shall be guilty of a Class 1 misdemeanor.

(d) For purposes of this section, 'enroll' shall include appearing, as directed by the Department, to receive the necessary equipment."

SECTION 7. 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. 14-208.40(a)(1).

(8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.40(a)(2), 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.

(9) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the probationer's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the probation supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised ~~probation, except as provided in G.S. 14-208.42.~~probation."

SECTION 8. G.S. 15A-1374(b)(11) reads as rewritten:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

...

(11) Submit at reasonable times to warrantless searches ~~of his person~~ by a parole officer of the parolee's person and of the parolee's vehicle and premises while the parolee is present, for purposes reasonably related to ~~his~~ the parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. If the parolee 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, warrantless searches of the parolee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the parole supervision. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive."

SECTION 9. 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:

(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. 14-208.40(a)(1).

(7) 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. 14-208.40(a)(2).

(8) Submit at reasonable times to warrantless searches by a post-release supervision officer of the supervisee's person and of the supervisee's vehicle and premises while the supervisee is present, for purposes reasonably related to the post-release supervision, but the supervisee may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the supervisee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the post-release supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive."

SECTION 10. G.S. 14-208.16(d) reads as rewritten:

"(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, a residence is established when the registrant does any of the following:

(1) Purchases the residence or enters into a specifically enforceable contract to purchase the residence.

(2) Enters into a written lease contract for the residence and for as long as the person is lawfully entitled to remain on the premises.

(3) Resides with an immediate family member who established residence in accordance with this subsection. For purposes of this subsection, "immediate family member" means a ~~child, sibling, or parent~~child or sibling who is 18 years of age or older, or a parent, grandparent, legal guardian, or spouse of the registrant."

SECTION 11. G.S. 14-208.43 is amended by adding a new subsection to read:

"(d1) Notwithstanding the provisions of this section, if the Commission is notified by the Department of Correction that the offender has been released, pursuant to G.S. 14-208.12A, from the requirement to register under Part 2 of Article 27A of this Chapter, upon request of the offender, the Commission shall order the termination of the monitoring requirement."

SECTION 12. G.S. 14-208.45 reads as rewritten:

"**§ 14-208.45. Fees.**

(a) ~~There shall be~~Except as provided in subsections (b) and (b1) of this section, each person required to enroll pursuant to this Part shall pay a one-time fee of ninety dollars ~~($90.00) assessed to each person required to enroll pursuant to this Part.~~($90.00). The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction. 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) When a court determines a person is required to enroll pursuant to G.S. 14-208.40A, the~~The~~ court may exempt a person from paying the fee required by subsection (a) of this section only for good cause and upon motion of the person ~~placed on~~required to enroll in 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.~~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.~~

(c) When a person is required to enroll based on a determination by the Department pursuant to G.S. 14-208.40B, the Department shall have the authority to exempt the person from paying the fee only for good cause and upon request of the person required to enroll in satellite-based monitoring. The Department 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.

~~(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction.~~

~~(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 13. G.S. 14-208.41 reads as rewritten:

"**§ 14-208.41. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

(a) Any person described by G.S. 14-208.40(a)(1) 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 registration period imposed under G.S. 14-208.23 which is the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to ~~G.S. 14-208.42.~~G.S. 14-208.43.

(b) Any person described by G.S. 14-208.40(a)(2) who is ordered by the court pursuant to G.S. 14-208.40A or required by the Department pursuant to G.S. 14-208.40B to enroll in a satellite-based monitoring program shall do so 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 time ordered by the ~~court.~~court or the period of time specified by the Department."

SECTION 14. G.S. 143B-266(e) reads as rewritten:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by ~~G.S. 14-208.42.~~G.S. 14-208.43. The Commission may grant or deny those requests in compliance with ~~G.S. 14-208.42.~~G.S. 14-208.43."

SECTION 15. Section 2 of this act becomes effective December 1, 2007, and applies to sentences entered on or after that date. Section 6 of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Sections 7, 8, and 9 of this act become effective December 1, 2007, and apply to persons placed on probation, parole, or post-release supervision on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 29

Committee Substitute Favorable 4/16/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H29-PCS50715-RK-46

Short Title: Sex Offender GPS/DOC Requests. (Public)

Sponsors:

Referred to:

January 30, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR SATELLITE-BASED MONITORING OF SEX OFFENDERS AND TO MAKE OTHER CHANGES TO THE SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. 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. ~~An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.~~

(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) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. ~~An offender in this category who~~

~~is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based 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."

SECTION 2. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, or has committed an aggravated offense, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 3. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the Department shall schedule a hearing in the court of the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, or (iii) the conviction offense was an aggravated offense, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results

to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 4. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.40C. Requirements of enrollment.

(a) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives an active sentence shall be enrolled and receive the appropriate equipment immediately upon the offender's release from the Division of Prisons.

(b) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives an intermediate punishment shall, immediately upon sentencing, report to the Division of Community Corrections for enrollment in the satellite-based monitoring program, and, if necessary, shall return at any time designated by that Division to receive the appropriate equipment. If the intermediate sentence includes a required period of imprisonment, the offender shall not be required to be enrolled in the satellite-based monitoring program during the period of imprisonment.

(c) Any offender required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B who receives a community punishment shall, immediately upon sentencing, report to the Division of Community Corrections for enrollment in the satellite-based monitoring program, and, if necessary, shall return at any time designated by that Division to receive the appropriate equipment."

SECTION 5. G.S. 14-208.42 reads as rewritten:

"§ 14-208.42. ~~Lifetime registration offenders~~ Offenders required to submit to satellite-based monitoring ~~for life and to continue on unsupervised probation~~ required to cooperate with Department upon completion of sentence.

Notwithstanding any other provision of law, when an offender is required to enroll in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B, ~~the court sentences an offender who is in the category described by G.S. 14-208.40(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender,~~ upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, the offender shall continue to be enrolled in the satellite-based monitoring program for ~~the offender's life and be placed on unsupervised probation~~the period required by G.S. 14-208.40A or G.S. 14-208.40B unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.43.

The Department shall have the authority to have contact with the offender at the offender's residence or to require the offender to appear at a specific location as needed for the purpose of enrollment, to receive monitoring equipment, to have equipment examined or maintained, and for any other purpose necessary to complete the requirements of the satellite-based monitoring program. The offender shall cooperate with the Department and the requirements of the satellite-based monitoring program until the offender's requirement to enroll is terminated and the offender has returned all monitoring equipment to the Department."

SECTION 6. G.S. 14-208.44 reads as rewritten:

"**§ 14-208.44. Failure to enroll; tampering with device.**

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class F felony.

(b) Any person who intentionally tampers with, removes, ~~or vandalizes~~vandalizes, or otherwise interferes with the proper functioning of a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class E felony.

(c) Any person required to enroll in a satellite-based monitoring program who fails to provide necessary information to the Department, or fails to cooperate with the Department's guidelines and regulations for the program shall be guilty of a Class 1 misdemeanor.

(d) For purposes of this section, 'enroll' shall include appearing, as directed by the Department, to receive the necessary equipment."

SECTION 7. 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. 14-208.40(a)(1).

(8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.40(a)(2), 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.

(9) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the probationer's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the probation supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised ~~probation, except as provided in G.S. 14-208.42.~~probation."

SECTION 8. G.S. 15A-1374(b)(11) reads as rewritten:

"(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

...

(11) Submit at reasonable times to warrantless searches ~~of his person~~ by a parole officer of the parolee's person and of the parolee's vehicle and premises while the parolee is present, for purposes reasonably related to ~~his~~ the parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. If the parolee 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, warrantless searches of the parolee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the parole supervision. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for

the actual cost of drug testing and drug screening, if the results are positive."

SECTION 9. 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:

(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. 14-208.40(a)(1).

(7) 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. 14-208.40(a)(2).

(8) Submit at reasonable times to warrantless searches by a post-release supervision officer of the supervisee's person and of the supervisee's vehicle and premises while the supervisee is present, for purposes reasonably related to the post-release supervision, but the supervisee may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the supervisee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the post-release supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the supervisee may also be

required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive."

SECTION 9A. G.S. 14-208.9(a) reads as rewritten:

"(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. If the person moves to another county, the person shall also report in person to the sheriff of the new county and provide written notice of the person's address not later than the tenth day after the change of address. 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~~When the Division receives notice from a sheriff that a person required to register is moving to another county in the State, the Division shall inform the sheriff of the new county of the person's new residence."

SECTION 10. G.S. 14-208.16(d) reads as rewritten:

"(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, a residence is established when the registrant does any of the following:

(1) Purchases the residence or enters into a specifically enforceable contract to purchase the residence.

(2) Enters into a written lease contract for the residence and for as long as the person is lawfully entitled to remain on the premises.

(3) Resides with an immediate family member who established residence in accordance with this subsection. For purposes of this subsection, "immediate family member" means a ~~child, sibling, or parent~~child or sibling who is 18 years of age or older, or a parent, grandparent, legal guardian, or spouse of the registrant."

SECTION 11. G.S. 14-208.43 is amended by adding a new subsection to read:

"(d1) Notwithstanding the provisions of this section, if the Commission is notified by the Department of Correction that the offender has been released, pursuant to G.S. 14-208.12A, from the requirement to register under Part 2 of Article 27A of this Chapter, upon request of the offender, the Commission shall order the termination of the monitoring requirement."

SECTION 12. G.S. 14-208.45 reads as rewritten:

"§ 14-208.45. Fees.

(a) ~~There shall be~~Except as provided in subsections (b) and (b1) of this section, each person required to enroll pursuant to this Part shall pay a one-time fee of ninety dollars ~~($90.00) assessed to each person required to enroll pursuant to this Part.~~($90.00). The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction. 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) When a court determines a person is required to enroll pursuant to G.S. 14-208.40A, the~~The~~ court may exempt a person from paying the fee required by subsection (a) of this section only for good cause and upon motion of the person ~~placed on~~required to enroll in 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.~~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.~~

(c) When a person is required to enroll based on a determination by the Department pursuant to G.S. 14-208.40B, the Department shall have the authority to exempt the person from paying the fee only for good cause and upon request of the person required to enroll in satellite-based monitoring. The Department 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.

~~(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction.~~

~~(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 13. G.S. 14-208.41 reads as rewritten:

"**§ 14-208.41. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

(a) Any person described by G.S. 14-208.40(a)(1) 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 registration period imposed under G.S. 14-208.23 which is the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to ~~G.S. 14-208.42.~~G.S. 14-208.43.

(b) Any person described by G.S. 14-208.40(a)(2) who is ordered by the court pursuant to G.S. 14-208.40A or required by the Department pursuant to G.S. 14-208.40B to enroll in a satellite-based monitoring program shall do so 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 time ordered by the ~~court.~~court or the period of time specified by the Department."

SECTION 14. G.S. 143B-266(e) reads as rewritten:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by ~~G.S. 14-208.42.~~G.S. 14-208.43. The Commission may grant or deny those requests in compliance with ~~G.S. 14-208.42.~~G.S. 14-208.43."

SECTION 15. Section 2 of this act becomes effective December 1, 2007, and applies to sentences entered on or after that date. Section 6 of this act becomes

effective December 1, 2007, and applies to offenses committed on or after that date. Sections 7, 8, and 9 of this act become effective December 1, 2007, and apply to persons placed on probation, parole, or post-release supervision on or after that date. Section 9A becomes effective December 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 29: Sex Offender GPS/DOC Requests

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 21, 2007
Introduced by:	Reps. Ray, Goforth	**Summary by:**	Hal Pell
Version:	PCS to Second Edition		Committee Co-Counsel

SUMMARY: This act amends various statutes to clarify the procedure for satellite-based monitoring of sex offenders, and makes other changes to the sex offender laws.

[As introduced, this bill was identical to S196, as introduced by Sen. Shaw, which is currently in Senate Judiciary I (Civil). The Proposed Committee Substitute adds Section 9A to the Second Edition of the House Bill].

CURRENT LAW: Current law provides that the Department of Correction establish guidelines for two categories of offenders:

- Any offender who is required to register for life because the person is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense.
- Any offender who must register for ten years, has committed an offense involving the physical, mental, or sexual abuse of a minor, and, based on the Department's risk assessment program, requires the highest possible level of supervision and monitoring.

The law provides for either category: "An offender in this category who is ordered by the court to submit to satellite-based monitoring . . . ." However, it is unclear whether the court has discretion to so order, or whether the court order is a ministerial act dependent upon whether a defendant is "required to register" based upon the offense. Further, there is no requirement that the court make the specific findings required for imposition of either program.

BILL ANALYSIS:

Section 1 makes technical changes to correspond to changes in Sections 2 and 3.

Section 2 creates a new G.S. 14-208.40A which establishes a procedure for determining when a sex offender is subject to satellite-based (GPS) monitoring. When an offender is convicted of a reportable conviction, during the sentencing phase, the district attorney must present any evidence that

- the offender has been classified as a sexually violent predator,
- the offender is a recidivist,
- the conviction offense was an aggravated offense, or
- the offense involved the physical, mental, or sexual abuse of a minor.

The offender may present any evidence that the district attorney's evidence is not correct.

After receipt of evidence from the parties, the court will determine if the offender meets any of the classifications, and if so, make a finding of fact to that effect. If the offender is found to be a sexually violent predator, a recidivist, or to have committed an aggravated offense, the court must order them to enroll in GPS monitoring for life.

If the offender has a reportable conviction; does not fall into a category requiring lifetime monitoring; and committed an offense involving the physical, mental, or sexual abuse of a minor, then court shall order the Department of Correction to do a risk assessment of the offender. The Department has 30 to 60 days to do the assessment and if the court determines, based on the Department's risk assessment, that the offender requires the highest possible level of supervision and monitoring, the court must order them to enroll in GPS monitoring and shall specify the period of time the offender must remain enrolled.

The current statute regarding conditions of probation includes a provision that if the court finds that there is "evidence of physical, mental or sexual abuse of a minor," the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment. The court is authorized by statute to order the defendant to pay the cost of such treatment.

The courts have considered "mental injury" when determining whether a defendant has committed the offense of assault inflicting serious injury. Mental injury constituted serious injury when the victim suffered several days of sexual assault with devices used to degrade and dehumanize. The victim required hospital admission and treatment for severe depression, suicidal tendencies, anorexia, insomnia, and feelings of hopelessness and helplessness.

Section 3 creates a new section which establishes a procedure for determining whether a sex offender is subject to GPS monitoring when no determination was made by a court. The Department of Correction shall make an initial determination whether the offender is required to enroll, and if so, schedules a hearing in the court in the county where the offender resides. The court shall then determine whether the offender is required to enroll in satellite-based monitoring for life, or to require the Department to conduct a risk assessment. The court will then determine the length of time for enrollment following receipt of the risk assessment from the Department.

Section 4 creates a new G.S. 14-208.40C which establishes the time an offender is required to report to the Department of Correction to enroll, based on whether they receive an active, an intermediate, or a community punishment.

Section 5 amends G.S. 14-208.42 to delete the provision for unsupervised probation. It authorizes the Department to have contact with an offender at the offender's residence, or to require the offender to appear at a specific location for the purpose of enrollment, or any other purpose necessary to complete the requirements of the program.

Section 6 amends G.S. 14-208.44 to clarify that failure to provide necessary information to the Department, or fails to cooperate with the program guidelines, is guilty of a Class 1 misdemeanor.

Section 7 amends the special conditions of probation for sex offenders to allow the probation officer to conduct warrantless searches of the probationer's person, vehicle and premises, while the probationer is present, and clarifies that the probationer's computer or other electronic mechanism containing electronic data may also be searched.

Section 8 amends the conditions of parole to authorize warrantless searches of a parolee's computer and other electronic data equipment if the parolee is a sex offender.

Section 9 amends the conditions of post-release supervision for sex offenders to allow the supervising officer to conduct warrantless searches of the supervisee's person, vehicle and premises, while the supervisee is present, and clarifies that the supervisee's computer or other electronic data devices may also be searches.

Section 9A amends the statute requiring persons on the sex offender registry to notify the sheriff when moving from county to county within the State.

Section 10 amends the exceptions to the residency restrictions for sex offenders to include a grandparent, legal guardian, or spouse, and also clarifies that a child or sibling must be 18 years old or older.

Section 11 requires the Post-Release Supervision and Parole Commission to terminate the GPS monitoring requirement for any sex offender who is released from the requirement to register as a sex offender.

Section 12 amends the statute regarding fees for GPS monitoring to clarify that all offenders must pay the fee unless they are exempted for good cause shown by the court or the Department of Correction.

Section 13 makes technical and conforming amendments to the statute requiring enrollment.

Section 14 makes technical amendments.

EFFECTIVE DATE:

:Section 2 – December 1, 2007 and applies to sentences entered on or after that date.

Section 6 – December 1, 2007 and applies to offenses committed on or after that date.

Sections 7 through 9 – December 1, 2007 and apply to persons placed on probation, parole or post-release supervision on or after that date.

Section 9A – December 1, 2007.

All other sections are effective when the act becomes law.

COMPARISON OF CURRENT LAW WITH HOUSE BILL 29 PCS

Provision	Current Law	PCS
Court-directed enrollment in a GPS program	The court "orders" an offender into GPS monitoring. The statute does not provide the time when the order occurs (at conviction or anytime thereafter). There are no provisions for a hearing, or findings of fact regarding the GPS category.	Provides specific guidelines: A hearing is held (1) at sentencing, or (2) upon request by the DOC when an offender has not had a judicial determination (e.g., release from confinement). The defendant may present evidence that the State's evidence is incorrect. The court determines whether the defendant meets the requirements for imposition of GPS monitoring. If lifetime GPS monitoring is not mandatory, the DOC does a risk assessment, and the court specifies whether the defendant must enroll, and for what length of time.
Enrollment requirements.	No specific statutory requirements.	Requires that any offender required to enroll receive the GPS equipment immediate (after sentencing, or upon release from the Division of Prisons).

Status after completion of parole, post-release supervision, or probation	Unsupervised Probation	Defendants "required" by statute to continue enrollment for the specified period. Department authorized to have contact with offender at the offender's residence; or to require the offender to appear at a specific location to receive equipment, or have it inspected.
Penalties	Failure to enroll is a Class F felony. Intentionally tampering with equipment is a Class E felony.	Retains penalties in current law, and adds "interfering with operation" to the tampering offense. Makes failure to provide necessary information or failure to cooperate a Class 1 misdemeanor.
Warrantless Searches	Probation, parole, and post-release statutes provide that as a condition, the defendant submit at reasonable times to warrantless searches of his or her person, and in the case of probation, his or her vehicle.	Amends statutes on special conditions of probation and post-release supervision for sex offenders to include the requirement that the defendant submit at reasonable times to warrantless searches of the person and vehicle for purposes related to the supervision. Also allows search of a computer for data related to the purpose of supervision. Amends parole conditions statute to include search of vehicle and computer.
Sheriff Notification when moving between counties	Requires notification of new address to sheriff with whom last registered	Adds requirement that sheriff of county of new address be notified.
Fee	Requires GPS enrollment fee of $90.	Provides that the court imposes the fee if at sentencing, and that the offender may be exempted with good cause shown. Provides that the Department imposes the fee upon its determination, and gives the DOC the authority to exempt the fee upon good cause shown. Clarifies that the fee is intended only of offset costs associated with the GPS tracking.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 21, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Meerul Khajuria	NCMC
T Mullen	NC AGO
[illegible]	NC Real Estate Commission
Robert Lee Guy	NC DCC
Hannah Rowland	NC DCC
Tim Moose	DOC-DCC
Mark Osborne	AOC
Troy Page	NC Sentencing Commission
Martin Pharr	DJJDP
Mildred Spearman	NCDOC
Ray Starling	NCDA&CS

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 21, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian Lewis	Covenant with NC's Children
Sarah Preston	ACLU-NC
Kevin Daly	ACLU-NC
Christine Wunsche	IOG – Daily Bulletin
Jami Fitzgerald	NC Family Policy Council
Colleen Kochanek	NCCADV
Will Polk	Office of Ct. Adm
Lisa Kimbrough	NCCASA

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 21, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAN CRAWFORD	Electric Cities of NC
Boyd Cauble	City of Charlotte
Andy Romanet	NCEMA
Kim Jagne	SBE

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 21, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Landon J. Adams	Triangle Lost Generation Task Force, Inc.
Courtney Crowder	Capstreet
[illegible]	BGA
Sarah Price	BGA
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Russ Dubishy	IFNC
Joe Stewart	IFNC
Steve Woodson	NCFB
Kevin Leonard	WCSR
Beau Mills	NC Metropolitan Coalition
Daniel Baum	Kennedy Covington

AGENDA
Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Thursday, June 21, 2007
10:00 a.m.
Room 1027

1. **Call Meeting to Order.**
2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 21 (SB 12)	Recovery of Costs in Civil Cases.	Representative Ross Representative Jones Representative Glazier Representative Spear
HB 29 (SB 196)	Sex Offender GPS/DOC Requests.	Representative Goforth Representative Ray
HB 47	Violate Order/Possess Deadly Weapon Felony.	Representative Ross Representative Farmer-Butterfield Representative Jeffus Representative McLawhorn
HB 590	Limit Liability at Agricultural Fairs – AB	Representative Hill
HB 1708	"Subject to" Real Estate Transactions	Representative Stam
SB 1358	Street Gang Prevention Act	Senator Graham

Adjournment.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Wednesday, June 20, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1354** Motor Vehicle Chop Shop Act.

Draft Number:	PCS 70564
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Thursday, June 21, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **590** Limit Liability at Agricultural Fairs.-AB
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE JUDICIARY I COMMITTEE
(Civil)

June 26, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Tuesday, June 26 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Vice Chair R. C. Soles, Senator Charlie Albertson, Senator Julia Boseman, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator Janet Cowell, Senator Malcolm Graham, Senator David Hoyle, Senator Vernon Malone, Senator Floyd McKissick, Senator Tony Rand, Senator Richard Stevens and Senator Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:12 and called Rep. Glazier to explain House Bill 21, a bill regarding recovery of costs in civil cases. Chairman Nesbitt asked if there was a Proposed Committee Substitute and the PCS was passed to members. Sen. Brunstetter moved for adoption of the PCS and the PCS was adopted through unanimous vote.

Rep. Glazier explained to the committee that the bill was a consensus bill that would try to undue a conflict in party costs in civil cases. Rep. Glazier noted two technical changes and said he knew of no opposition to the Bill. Chairman Nesbitt asked for comments from the committee. Sen. Clodfelter then moved for favorable report. With no other discussion, the bill received favorable report through unanimous vote. Chairman Nesbitt noted that Sen. Boseman had a companion bill and would handle the bill in the Senate Chamber.

Chairman Nesbitt then called on Rep. Ray for House Bill 27, a bill requiring photo lab personnel to report suspected pornographic images to law enforcement, a supervisor or a national hotline. Chairman Nesbitt noted that there would be an amendment to the bill and that the North Carolina Merchant's Association had no objection. An amendment was offered by Sen. Nesbitt and passed unanimously. Staff Attorney Hal Pell explained that the amendment added "digital" along with "photographic" images throughout the bill.

Rep. Ray then explained the bill and Chairman Nesbitt called on discussion by committee members. With no discussion he then called on the audience for comments. Again, with no discussion, Sen. Boseman moved for favorable report. The motion passed unanimously.

Chairman Nesbitt then called on Rep. Faison for House Bill 244, a Bill allowing a judge to increase the number of challenges on one side to give the other side an equal number of challenges.

A Proposed Committee Substitute was distributed to member and was adopted through by unanimous vote by a motion by Sen. Rand. Rep. Faison explained the bill and Chairman Nesbitt called on Staff Attorney Bill Gilkeson to add any further comments.

After little discussion, Sen. McKissick moved for favorable report. The motion passed unanimously.

Chairman Nesbitt called on Rep. Boylan regarding House Bill 976. Rep. Boylan explained that the bill was a public safety bill that expanded emergency medical, fire and law enforcement's reach into private, gated communities. Chairman Nesbitt asked Staff Attorney Hal Pell if he had any additional comments about the bill and Pell responded saying that there was no statutory definition of a "gated community."

Sen. Clodfelter noted that the definition could apply to factory gates. He then asked if Section 2 of the bill applied to properties other than gated communities. Pell responded that it did.

Sen. Rand asked staff if school buses were permitted to enter gated communities. Rep. Boylan responded that school districts will allow buses onto a community. Sen. Rand asked if this Bill would allow law enforcement to enforce traffic laws, i.e. speed traps. Sen. Rand then followed asking, "if they cannot go in to monitor traffic, what would the bill do?" Rep. Boylan said that emergency vehicles would respond to emergencies. Sen. Rand then asked if there would be a public responsibility for road maintenance because of the bill. Rep. Boylan said here would not be an impact.

Sen. Tillman moved for favorable report and ample discussion ensued among members. Sen. McKissick said that he felt there were more apartment communities being built than gated communities. Sen. McKissick asked of a penalty if a community does not allow access and said that the access number for gated communities is 911 and that others outside of the community could figure out a 911 pass code. Rep. Boylan explained that 911 did not have to be the standard pass code. Sen. Clodfelter said that the application extended far beyond gated communities.

Noting the issues among members regarding the bill, Chairman Nesbitt appointed a subcommittee to reexamine the bill. Members appointed were Senators Tillman, Rand and Clodfelter.

Chairman Nesbitt called on SB 1358 and recognized the bill sponsor Sen. Graham. A Proposed Committee Substitute was distributed to members and through a motion for adoption by Sen. Graham discussion began.

The bill was then amended by Sen. Soles. A second amendment was offered by Sen. Clodfelter. Both amendments passed unanimously. Senator Nesbitt recognized Tony Asion, Director of Public Safety at El Pueblo, a Latino advocacy group located in Raleigh. Mr. Asion told the committee that he had significant law enforcement experience and that he had learned through his experience that gang crimes cannot be

solved by prevention alone. The bill was then pulled and the meeting was adjourned at 11:02.

House Bill 21, a Proposed Committee Substitute for HB 21, a Bill Analysis for the PCS for HB 21, House Bill 27, a Proposed Committee Substitute for HB 27, a Bill Analysis for HB 27, a Nesbitt Amendment to the PCS HB 27, House Bill 244, a Proposed Committee Substitute for HB 244, a Bill Analysis for the PCS for HB 244, House Bill 976, a Bill Analysis for HB 976, Senate Bill 1358, a Proposed Committee Substitute for SB 1358, a Bill Analysis for the PCS for SB 1358, the Soles Amendment for the PCS for SB 1358, and the Clodfelter Amendment to SB 1358 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 1

HOUSE BILL 21

Short Title:	Recovery of Costs in Civil Cases.	(Public)
Sponsors:	Representatives Glazier, Ross, Jones, Spear (Primary Sponsors); Alexander, Barnhart, Current, Farmer-Butterfield, Folwell, Harrison, Lewis, Lucas, McGee, Samuelson, Stam, Tillis, Underhill, and Wray.	
Referred to:	Rules, Calendar, and Operations of the House.	

January 29, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-19 reads as rewritten:

"**§ 6-19. When costs allowed as of course to defendant.**

Costs shall be allowed as of course to the defendant, in the actions mentioned in ~~the preceding section~~ G.S. 6-18 unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them."

SECTION 2. G.S. 6-20 reads as rewritten:

"**§ 6-20. Costs allowed or not, in discretion of court.**

~~In other actions, costs~~ Costs may be allowed ~~or not,~~ in the discretion of the court ~~court, unless otherwise provided by law.~~subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), except as otherwise provided by the General Statutes."

SECTION 3. G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are ~~also~~ assessable or recoverable, as the case may ~~be:~~ be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

(1) Witness fees, as provided by law.
(2) Jail fees, as provided by law.
(3) Counsel fees, as provided by law.
(4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of mediators appointed by the court or agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

(10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the cost of deposition transcripts.

(11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings."

SECTION 4. This act becomes effective May 1, 2007, and applies to all motions for costs filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H D

HOUSE BILL 21
PROPOSED SENATE COMMITTEE SUBSTITUTE H21-CSTC-38 [v.5]

6/25/2007 12:09:36 PM

Short Title: Recovery of Costs in Civil Cases. (Public)

Sponsors:

Referred to:

January 29, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-19 reads as rewritten:

"**§ 6-19. When costs allowed as of course to defendant.**

Costs shall be allowed as of course to the defendant, in the actions mentioned in ~~the preceding section~~ G.S. 6-18 unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them."

SECTION 2. G.S. 6-20 reads as rewritten:

"**§ 6-20. Costs allowed or not, in discretion of court.**

~~In other actions,~~ In actions where allowance of costs are not otherwise provided by the General Statutes, costs may be allowed ~~or not,~~ in the discretion of the court.~~court, unless otherwise provided by law.~~ Costs awarded by the court are subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), unless specifically provided for otherwise in the General Statutes."

SECTION 3. G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are ~~also~~ assessable or recoverable, as the case may ~~be:~~ be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

(1) Witness fees, as provided by law.
(2) Jail fees, as provided by law.
(3) Counsel fees, as provided by law.
(4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of mediators appointed by the court, mediators agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

(10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the cost of deposition transcripts.

(11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings.

Nothing in this subsection or in G.S. 6-20 shall be construed to limit the trial court's authority to award fees and expenses in connection with pre-trial discovery matters as provided in Rule 26(b) or Rule 37 of the Rules of Civil Procedure, and no award of costs made pursuant to this section or pursuant to G.S. 6-20 shall reverse or modify any such orders entered in connection with pre-trial discovery."

SECTION 4. This act becomes effective August 1, 2007, and applies to all motions for costs filed on or after that date.

HOUSE BILL 21:
Recovery of Costs in Civil Cases

BILL ANALYSIS

Committee:	Senate Judiciary 1 (Civil)	**Date:**	June 26, 2007
Introduced by:	Reps. Glazier, Ross, Jones, Spear	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to First Edition H21-CSTC-38[v.6]		

SUMMARY: ***House Bill 21 is a recommendation of the House Select Committee to Study the Recovery of Civil Costs. This bill would allow costs to be recovered in civil cases in the discretion of the court, subject to specific limitations set in statute.***

The revised PCS would change the effective date of the bill from May 1, 2007 to August 1, 2007, clarify the language in G.S. 6-20, and add clarifying language providing that the lists of expenses in G.S. 7A-305(d) do not limit the court's authority to award fees and expenses under Rule 26(b) or Rule 37 of the Rules of Civil Procedure.

CURRENT LAW: There are several statutes that address costs in civil cases. G.S. 6.1 states that a prevailing party is entitled to costs as set forth in Chapter 6 and Chapter 7A. G.S. 6-18 and G.S. 6-19 delineate the types of actions in which costs can be awarded to prevailing party. G.S. 6-20 provides that the costs may be allowed in the discretion of the court unless otherwise specified in the law. G.S. 7A-305, however, lists the expenses that may be awarded by the court. These costs include: witness fees, jail fees, counsel fees, fees for service of process by mail, transcripts for appeals, personal service and civil process, fees of certain court appointees and interpreters, and authorized premiums for surety bonds for prosecution.

Rule 26(b)(4)(b) of the Rules of Civil Procedure provides that, unless manifest injustice would result, the court shall require a party seeking discovery of another party's expert witness to pay a reasonable fee to the expert for the time spent responding to such a request, and that the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably occurred by the other party from the expert.

Rule 37 of the Rules of Civil Procedure provides for an award of expenses to the prevailing party for a motion for an order compelling discovery, failure to comply with an order, failure to admit, failure to attend own deposition, serve answers to interrogatories or respond to requests for inspection, and failure to participate in framing a discovery plan.

BILL ANALYSIS: House Bill 21 would clarify in G.S. 6-20 that, when allowance of costs are not otherwise provided for, costs may be allowed in the discretion of the court. Costs awarded would be subject to the limitations set forth in G.S. 7A-305(d), unless specifically provided for otherwise in the statutes.

House Bill 21 would also clarify in G.S. 7A-305(d) that expenses set forth in that subsection are complete and exclusive and constitute a limit on the court's discretion to tax costs pursuant to G.S. 6-20. The bill would add the following expenses to the current list of expenses that can be awarded:

- Fees of mediators appointed by the court or mediators agreed by the parties.
- Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions, and for the costs of deposition transcripts.

- Reasonable and necessary fees of expert witnesses for the time spent providing testimony at trials, depositions, and other proceedings.

However, the subsection would not limit the court's discretion with regards to orders pursuant to Rule 26(b) or Rule 37 of the Rules of Civil Procedure during the course of pre-trial discovery.

EFFECTIVE DATE: This bill would become effective August 1, 2007 and apply to all motions for cost filed on or after that date.

BACKGROUND: There have been a number of conflicting cases from the North Carolina Court of Appeals on the interpretations of G.S. 6-20 and G.S. 7A-305. There have been three approaches used by the Court of Appeals in addressing court costs that are not listed in G.S. 7A-305. The first line of cases uses a strict interpretation that allows costs only if they are specifically listed in G.S. 7A-305. The second line of cases allows the court to award the costs listed in G.S. 7A-305, as well as any costs that are "reasonable and necessary" under the discretionary provision of G.S. 6-20. From 1982-2002, the courts allowed items such as travel expenses, trial exhibits, and depositions costs even though they are not listed in G.S. 7A-305. The third approach allows for costs for the items listed in G.S. 7A-305 and any costs recognized by "existing common law before 1983" or in other words, any costs allowed by an appellate court before 1983. The House Select Committee to Study the Recovery of Civil Costs addressed these conflicts and recommended House Bill 21.

This bill summary was substantially contributed to by Drupti Chauhan, Staff Counsel.

H0021e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 27

Committee Substitute Favorable 3/27/07

Short Title: Duty To Report Child Porn. (Public)

Sponsors:

Referred to:

January 30, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A FILM AND PHOTOGRAPHIC PRINT PROCESSOR OR A COMPUTER TECHNICIAN WHO, IN THE PERSON'S SCOPE OF EMPLOYMENT, OBSERVES AN IMAGE OF A MINOR OR A PERSON WHO REASONABLY APPEARS TO BE A MINOR ENGAGING IN SEXUAL ACTIVITY MUST REPORT THE NAME OF THE PERSON REQUESTING THE PROCESSING OF THE FILM OR PHOTOGRAPHS OR IN POSSESSION OF THE COMPUTER TO THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN OR TO THE APPROPRIATE LOCAL LAW ENFORCEMENT OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 66 is amended by adding a new section to read:

"**§ 66-67.4. Film and photographic print processor or computer technician to report film or computer images containing pictures of a minor engaging in sexual activity.**

(a) As used in this section:

(1) "Computer technician" means any person who repairs, installs, or otherwise services any computer or computer network or system for compensation.

(2) "Film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides for compensation.

(3) "Minor" has the same meaning as in G.S. 14-190.13.

(4) "Sexual activity" has the same meaning as in G.S. 14-190.13.

(b) Any film and photographic print processor or any computer technician who, within the person's scope of employment, observes an image of a minor or a person who reasonably appears to be a minor engaging in sexual activity shall report the name and address of the person requesting the processing of the film or photographs or the owner

or person in possession of the computer or computer network or system to the Cyber Tip Line at the National Center for Missing and Exploited Children or to the appropriate law enforcement official in the county or municipality in which the image or film was submitted.

(c) An employee of a film and photographic print processor or computer technician may satisfy the requirements of this section by reporting the required information to a person designated by the employer. The person designated by the employer shall then report as required by subsection (b) of this section.

(d) Any person, their employer, or a third-party complying with this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred as a result of the report. In any proceeding involving liability, good faith is presumed."

SECTION 2. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 27

Committee Substitute Favorable 3/27/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H27-PCS70570-RK-49

Short Title: Duty To Report Child Porn. (Public)

Sponsors:

Referred to:

January 30, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A FILM AND PHOTOGRAPHIC PRINT PROCESSOR OR A COMPUTER TECHNICIAN WHO, IN THE PERSON'S SCOPE OF EMPLOYMENT, OBSERVES AN IMAGE OF A MINOR OR A PERSON WHO REASONABLY APPEARS TO BE A MINOR ENGAGING IN SEXUAL ACTIVITY MUST REPORT THE NAME OF THE PERSON REQUESTING THE PROCESSING OF THE FILM OR PHOTOGRAPHS OR IN POSSESSION OF THE COMPUTER TO THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN OR TO THE APPROPRIATE LOCAL LAW ENFORCEMENT OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 66 is amended by adding a new section to read:

"**§ 66-67.4. Film and photographic print processor or computer technician to report film or computer images containing pictures of a minor engaging in sexual activity.**

(a) As used in this section:

(1) "Computer technician" means any person who repairs, installs, or otherwise services any computer or computer network or system for compensation.

(2) "Processor of photographic images" means any person who, for compensation: (i) develops exposed photographic film into negatives, slides, or prints; (ii) makes prints from negatives, slides, digital images, or video; or (iii) develops, processes, transfers, edits, or enhances video or digital images.

(3) "Minor" has the same meaning as in G.S. 14-190.13.

(4) "Sexual activity" has the same meaning as in G.S. 14-190.13.

(b) Any processor of photographic images or any computer technician who, within the person's scope of employment, observes an image of a minor or a person who reasonably appears to be a minor engaging in sexual activity shall report the name and address of the person requesting the processing of the film or photographs or the owner or person in possession of the computer or computer network or system to the Cyber Tip Line at the National Center for Missing and Exploited Children or to the appropriate law enforcement official in the county or municipality in which the image or film was submitted.

(c) An employee of a processor of photographic images or computer technician may satisfy the requirements of this section by reporting the required information to a person designated by the employer. The person designated by the employer shall then report as required by subsection (b) of this section.

(d) Any person, their employer, or a third party complying with this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred as a result of the report. In any proceeding involving liability, good faith is presumed."

SECTION 2. This act becomes effective July 1, 2007.

HOUSE BILL 27: Duty To Report Child Porn

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 7, 2007
Introduced by:	Reps. Ray, Goforth, Glazier, Spear	**Summary by:**	Hal Pell
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 27 would provide that any film processor or computer technician who views an image of a minor or a person who reasonably appears to be a minor engaging in sexual activity must report the name of the person requesting the development of the film or the person in possession of the computer to the National Center for Missing and Exploited Children or the appropriate local law enforcement officer. This act becomes effective July 1, 2007.***

[As introduced, this bill was identical to S69, as introduced by Sen. Goss, which is currently in Senate Judiciary I (Civil). This bill is substantially similar to S69. The bill adds definitions, allows an employer to designate a person to make the report, and places the provision into Article 13, Chapter 66 of the General Statutes, which deals with miscellaneous provisions relating to commerce and business. The provision in S69 was located in Chapter 14, which is the criminal code section of the General Statutes.]

CURRENT LAW: General Statute 7B-301 requires any person who suspects that a juvenile is abused, neglected, or dependent or has died as the result of maltreatment to report the information to the director of the department of social services in the county where the juvenile resides or is found. General Statute 115C-400 places a similar requirement specifically on school personnel. Neither of these duties carries a statutory penalty for failure to report.

BILL ANALYSIS: House Bill 27 would require

- any retail or wholesale film processor or photo finisher who is requested to develop film and
- any computer technician working with a computer

who views an image of a minor, or a person who reasonably appears to be a minor, who is engaging in sexual activity to report the name and address of (1) the person requesting the development of the film or (2) the owner or person in possession of the computer, to the Cyber Tip Line at the National Center for Missing and Exploited or to the appropriate local law enforcement officer.

A minor is an individual who is less than 18 years old and is not married or judicially emancipated.

Sexual activity is defined as any of the following acts:

- Masturbation, whether done alone or with another human or an animal.
- Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
- Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
- An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

- Excretory functions.
- The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

An employee of a film processor or a computer technician may satisfy this reporting requirement by reporting the information to a person designated by their employer. The person designated by the employer must then report to the Cyber Tip Line at the National Center for Missing and Exploited or to the appropriate local law enforcement officer. Any person, their employer, or a third-party complying with this section in good faith shall be immune from civil or criminal liability that might arise from reporting.

The duty imposed by the new statute would not impose a penalty for failure to report.

EFFECTIVE DATE: This act would become effective July 1, 2007.

Jeff Hudson, Staff Attorney, substantially contributed to this summary.

H0027e2-SMRK

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 27

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

H27-ARK-4 [v.1]

Date _____,2007

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

_____

moves to amend the bill on page 1, lines 21 through 23, by rewriting the lines to read:

"(2) "Processor of photographic images" means any person who, for compensation: (i) develops exposed photographic film into negatives, slides, or prints; (ii) makes prints from negatives, slides, digital images, or video; or (iii) develops, processes, transfers, edits, or enhances video or digital images."

AND

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 _____

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 26

( ) WHICH CHANGES THE TITLE

by deleting the words

"film and photographic print processor"

and substituting the words

"processor of photographic images";

and on page 2, line 5,

by deleting the words

"film and photographic print processor"

and substituting the words

"processor of photographic images".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 3

HOUSE BILL 244
Committee Substitute Favorable 3/27/07
Committee Substitute #2 Favorable 5/17/07

Short Title: Civil Jury Selection/Equal Challenges. (Public)

Sponsors:

Referred to:

February 19, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE EQUITY BETWEEN THE PARTIES WITH RESPECT TO JUROR CHALLENGES IN CIVIL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-20 reads as rewritten:

"**§ 9-20. Civil cases having several plaintiffs or several defendants; challenges apportioned; discretion of judge.**

(a) When there are two or more defendants in a civil action, the presiding judge, if it appears that there are antagonistic interests between the defendants, may in ~~his~~ the judge's discretion apportion among the defendants the challenges now allowed by law, or ~~he~~ the judge may increase the number of challenges to not exceeding six for each defendant or class of defendants representing the same interest. ~~In either event, the same number of challenges shall be allowed each defendant or class of defendants representing the same interest. The decision of the judge as to the nature of the interests and number of challenges shall be final.~~

(b) When there are two or more plaintiffs in a civil action, the presiding judge, if it appears that there are antagonistic interests between the plaintiffs, may, in the judge's discretion, apportion among the plaintiffs the challenges now allowed by law, or the judge may increase the number of challenges to not exceeding six for each plaintiff or class of plaintiffs representing the same interest.

(c) Whenever a judge exercises the discretion authorized by subsection (a) or (b) of this section to increase the number of challenges for either the plaintiffs or the defendants, the judge may, in the judge's discretion, increase the number of challenges for the opposing side, not to exceed the total number given to the other side."

SECTION 2. This act becomes effective October 1, 2007, and applies to actions called for trial on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 244
Committee Substitute Favorable 3/27/07
Committee Substitute #2 Favorable 5/17/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H244-CSRR-33 [v.1]

6/25/2007 6:35:26 PM

Short Title: Civil Jury Selection/Equal Challenges. (Public)

Sponsors:

Referred to:

February 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EQUITY BETWEEN THE PARTIES WITH RESPECT TO JUROR CHALLENGES IN CIVIL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-20 reads as rewritten:

"**§ 9-20. Civil cases having several plaintiffs or several defendants; challenges apportioned; discretion of judge.**

(a) When there are two or more defendants in a civil action, the presiding judge, if it appears that there are antagonistic interests between the defendants, may in ~~his~~ the judge's discretion apportion among the defendants the challenges now allowed by law, or ~~he~~ the judge may increase the number of challenges to not exceeding six for each defendant or class of defendants representing the same interest. ~~In either event, the same number of challenges shall be allowed each defendant or class of defendants representing the same interest. The decision of the judge as to the nature of the interests and number of challenges shall be final.~~

(b) When there are two or more plaintiffs in a civil action, the presiding judge, if it appears that there are antagonistic interests between the plaintiffs, may, in the judge's discretion, apportion among the plaintiffs the challenges now allowed by law, or the judge may increase the number of challenges to not exceeding six for each plaintiff or class of plaintiffs representing the same interest.

(c) Whenever a judge exercises the discretion authorized by subsection (a) or (b) of this section to increase the number of challenges for either the plaintiffs or the defendants, the judge may, in the judge's discretion, increase the number of challenges for the opposing side, not to exceed the total number given to the other side."

SECTION 2. This act becomes effective October 1, 2007, and applies to actions called for trial on or after that date.

HOUSE BILL 244:
Civil Jury Selection/Equal Challenges

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 25, 2007
Introduced by:	Reps. Faison, Glazier, Stam, Moore	**Summary by:**	William R. Gilkeson
Version:	PCS to Third Edition H244-CCSRR-33		Committee Co-Counsel

SUMMARY: ***This Proposed Committee Substitute for House Bill 244 would provide for equity between the parties with respect to juror challenges in civil cases by authorizing the judge to apportion or increase the number of challenges for plaintiffs with antagonistic interests under the same circumstances that a judge may now increase the number of juror challenges for defendants with antagonistic interests.***

CURRENT LAW: G.S. 9-19 provides for peremptory challenges (challenges without cause) of jurors in civil cases. Under the current law, each of the parties is allowed eight challenges. G.S. 9-20 addresses cases where there is more than one defendant, and those defendants have antagonistic interests. In those cases, the judge may apportion the eight challenges between the defendants, or may increase the total number of challenges to allow up to six for each defendant.

If the judge divides up the challenges among the defendants, the judge must give each defendant or class of defendants representing the same interest the same number of challenges.

The statute does not address cases that have multiple antagonistic plaintiffs.

BILL ANALYSIS: The PCS would take the discretion the judge in a civil case currently has with regard to antagonistic defendants and extend that discretion to antagonistic plaintiffs. In cases where multiple plaintiffs have antagonistic interests, the amended G.S. 9-20(b) would give the judge the discretion to apportion the eight challenges among the plaintiffs or to increase the total number of challenges to allow up to six for each plaintiff.

The PCS removes the requirement that the judge give each defendant or class of defendants representing the same interest the same number of challenges.

If the judge decided to increase the number of challenges for plaintiffs or defendants, the judge would also have the discretion to increase the number of challenges for the opposing side, not to exceed the total number given to the other side.

EFFECTIVE DATE: The bill would become effective October 1, 2007, and would apply to actions called for trial on or after that date.

Wendy Graf Ray substantially contributed to this summary.

H0244e3-SMRR-CCSRR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 976

Committee Substitute Favorable 4/19/07
Committee Substitute #2 Favorable 5/21/07

Short Title: Public Vehicular Areas Defined. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF PUBLIC VEHICULAR AREA IN MOTOR VEHICLE LAW AND TO REQUIRE ACCESS TO GATED COMMUNITIES FOR EMERGENCY SERVICE VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(32) 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:

...

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.

2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.

3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this

definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road used by vehicular traffic within or leading to a subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

e. The area is a road used by vehicular traffic within or leading to a gated subdivision, whether or not the subdivision roads have been offered for dedication to the public."

SECTION 2. Part 10 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-158.3. Emergency entry to controlled access roads.**

Any person, association, or other legal entity having responsibility for a controlled access system on a road that is a public vehicular area shall provide a means of immediate access to all emergency service vehicles, which shall include law enforcement, fire, rescue, ambulance, and first responder vehicles."

SECTION 3. This act becomes effective December 1, 2007.

HOUSE BILL 976:
Public Vehicular Areas Defined

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 25, 2007
Introduced by:	Rep. Boylan	**Summary by:**	Hal Pell
Version:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 976 changes the definition of "public vehicular area" in the motor vehicle law of the State to include roads within or leading to gated communities, and requires persons responsible for the controlled access systems at gated communities to provide a means of access for all emergency service vehicles. This act becomes effective December 1, 2007.***

CURRENT LAW: Current law does not include roads within gated communities as a part of the definition of "public vehicular areas." There is currently no requirement that gated communities provide access for emergency vehicles, and there is no statutory definition of "gated community."

BILL ANALYSIS:

Section 1: House Bill 976 changes the definition of "public vehicular area" to include roads within or leading to gated communities. Several motor vehicle laws apply in public vehicular areas, including laws concerning DWI, reckless driving, speeding at a rate greater than is reasonable and prudent under the conditions, turn signals, and passing a stopped school bus.

Section 2: The bill requires any person responsible for a controlled access system on a road that is a public vehicular area to provide a means of access to all emergency service vehicles, including law enforcement, fire, rescue, ambulance, and first responder vehicles. Violation of this provision would constitute an infraction pursuant to G.S. 20-176, with a penalty of not more than $100.00.

EFFECTIVE DATE: This act becomes effective December 1, 2007.

Giles Perry, Counsel to the House Transportation Committee, and Steve Rose, Counsel to House Judiciary Committee I, substantially contributed to this summary.

H0976e3-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1358

Short Title:	Street Gang Prevention Act.	(Public)
Sponsors:	Senators Graham; Albertson, Atwater, Berger of Franklin, Clodfelter, Cowell, Dannelly, Foriest, Jenkins, Jones, Malone, Pittenger, Shaw, Snow, Swindell, Tillman, and Weinstein.	
Referred to:	Judiciary I (Civil).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.

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 13A.

"North Carolina Street Gang Prevention Act.

"**§ 14-50.15. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Prevention Act".

"**§ 14-50.16. Legislative findings and intent.**

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Article to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of North Carolina is in a state of crisis that has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The General Assembly finds that there are criminal street gangs operating in North Carolina and that the number of gang-related murders is increasing. It is the intent of the General Assembly in enacting this Article to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which together are the chief source of terror created by street gangs.

(d) The General Assembly finds that prevention of violent gang activity and efforts to prevent violent gangs' ability to recruit additional members are effective means of addressing the issues created by gangs in this State.

(e) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

"**§ 14-50.17. Definitions.**

The following definitions apply in this Article:

(1) 'Criminal street gang' or '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 one or more felony offenses, or delinquent acts that would be felonies if committed by an adult, which has a common name, common identifying sign or symbol, and three or more members individually or collectively engaged in or who have engaged in criminal gang activity.

(2) 'Pattern of criminal gang activity' means the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the following offenses, provided that at least one of these offenses occurred after December 1, 2007, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity:

a. Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).

b. Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

(3) 'Criminal street gang member' means a person to whom two or more of the following criteria apply:

a. Admits to criminal street gang membership;

b. Is identified as a criminal street gang member by a documented reliable informant;

c. Resides in or frequents a particular criminal street gang's area and adopts its style of dress, its use of hand signals or its tattoos and associates with known criminal street gang members;

d. Has been arrested more than once in the company of known criminal street gang members for offenses which are consistent with usual criminal street gang activity;
e. Is identified as a criminal street gang member by physical evidence, such as photographs or other documentation;
f. Has been stopped in the company of known criminal street gang members four or more times;
g. Has been identified as a criminal street gang member by other law enforcement agencies; or
h. Is identified as a criminal street gang member by a parent or guardian.

"**§ 14-50.18. Participation in criminal street gang activity prohibited.**

(a) It is unlawful for any person employed by or associated with a criminal street gang to conduct or participate in the criminal street gang through a pattern of criminal gang activity.

(b) It is unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(c) It is unlawful for any person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity.

(d) It is unlawful for any person to cause, encourage, solicit, or coerce another to participate in a criminal street gang.

(e) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

(f) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

(g) Any person who violates this section shall be punished as follows:

(1) A person who violates subsection (a) or (b) of this section shall, in addition to any other penalty imposed by law, be punished as a Class H felon.

(2) A person who violates subsection (a), (b), (d), (e), or (f) of this section may, if the person also violates subsection (c) of this section in the same course of conduct, in addition to any other penalty provided by law, be punished by imprisonment for an additional 10 years which shall be served consecutively to any other sentence imposed on the person by law.

(3) A person who violates subsection (d), (e), or (f) of this section shall, in addition to any other penalty provided by law, be punished as a Class H felon.

(h) Any crime committed in violation of this section shall be considered a separate offense.

"§ 14-50.19. Enhanced offense for criminal gang activity.

Unless a different classification is expressly stated, a person who is convicted of an offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this section.

This section does not apply to the offenses set forth in G.S. 14-50.18.

"§ 14-50.20. Reports of disposition; criminal street gang activity.

When a defendant is found guilty of an offense, the presiding judge shall determine whether the offense was committed for the benefit of, at the direction of, or in association with, any criminal street gang. If the judge determines that the offense so qualifies, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal street gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes the court's determination.

"§ 14-50.21. Contraband, seizure, and forfeiture.

(a) All of the following are declared to be contraband, and no person shall have a property interest in them:

(1) All property that is directly or indirectly used or intended for use in any manner to facilitate a violation of this Article.

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this Article.

(b) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

(c) Within 60 days of the date of the seizure of contraband pursuant to this section, the district attorney or the Attorney General shall initiate a forfeiture proceeding as provided in G.S. 14-2.3.

"§ 14-50.22. Local ordinances not preempted by State law.

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

"§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement.

Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes. If the property is owned by a person who is not a member of the

criminal street gang, this section shall apply only if the person has knowledge of the criminal gang activity.

"**§ 14-50.24. Matters proved in criminal trial court.**

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct.

"**§ 14-50.25. Applicability to juveniles under the age of sixteen.**

The provisions of this Article shall not apply to juveniles under the age of 16."

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-34.9. Discharging a firearm from within an enclosure.**

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm, as a part of a pattern of criminal gang activity, from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

SECTION 3. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1358
PROPOSED COMMITTEE SUBSTITUTE S1358-CSRK-43 [v.13]

6/25/2007 3:58:07 PM

Short Title: Street Gang Prevention Act. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.

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 13A.

"North Carolina Street Gang Prevention Act.

"**§ 14-50.15. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Prevention Act".

"**§ 14-50.16. Legislative findings and intent.**

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the criminal activities of groups and individuals. It is not the intent of this Article to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of North Carolina is in a state of crisis that has been caused by criminal street gangs, whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The General Assembly finds that there are criminal street gangs operating in North Carolina and that the number of gang-related murders is increasing. It is the intent of the General Assembly in enacting this Article to seek the eradication of criminal street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together create the chief source of terror.

(d) The General Assembly finds that prevention of criminal street gang activity and efforts to prevent a violent gang's ability to recruit additional members are effective means of addressing the issues created by gangs in this State.

(e) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by criminal street gangs.

"**§ 14-50.17. Definitions.**

The following definitions apply in this Article:

(1) 'Criminal street gang' or '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 one or more felony offenses, or delinquent acts that would be felonies if committed by an adult, which has a common name, common identifying sign or symbol, and has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity.

(2) 'Criminal street gang activity' means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang or street gang. An act or acts are included if accompanied by the necessary mens rea or criminal intent, and would be chargeable by indictment under the following laws of this State:

a. Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).

b. Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

(3) 'Pattern of criminal street gang activity' means engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity, as defined in subdivision (2) of this section, that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2007, and the last of the offenses occurred within three years, excluding any

periods of imprisonment, of prior criminal street gang activity. Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity.

"**§ 14-50.18. Participation in criminal street gang activity prohibited.**

(a) It is unlawful for any person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity.

(b) It is unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(c) It is unlawful for any person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity.

(d) It is unlawful for any person to cause, encourage, solicit, or coerce another to participate in criminal street gang activity.

(e) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

(f) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

(g) Any person who violates subsection (c) of this section shall be guilty of a Class F felony. Any person who violates subsections (a), (b), (d), (e), or (f) of this section shall be guilty of a Class H felony.

(h) Any crime committed in violation of this section shall be considered a separate offense.

"**§ 14-50.19. Enhanced offense for criminal gang activity.**

A person who is convicted of a misdemeanor offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this section.

"**§ 14-50.20. Reports of disposition; criminal street gang activity.**

When a defendant is found guilty of a criminal offense other than an offense under G.S. 14-50.18 or G.S. 14-50.19, the presiding judge shall determine whether the offense involved criminal street gang activity. If the judge so determines, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal street gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes a notation of the court's determination.

"**§ 14-50.21. Contraband, seizure, and forfeiture.**

(a) All property of every kind used or intended for use in the course of, derived from, or realized through criminal street gang activity or a pattern of criminal street gang activity is subject to the seizure and forfeiture provisions of G.S. 14-2.3.

(b) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

"**§ 14-50.22. Local ordinances not preempted by State law.**

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

"**§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement.**

(a) Public Nuisance. – Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal street gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes.

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal street gang activity, where the owner or person who has legal possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

"**§ 14-50.24. Matters proved in criminal trial court.**

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct.

"**§ 14-50.25. Applicability to juveniles under the age of sixteen.**

The provisions of this Article shall not apply to juveniles under the age of 16."

"**§ 14-50.26. Conditional discharge and expunction of records for first offense.**

(a) A person who is convicted of an offense under G.S. 14-50.18 or G.S. 14-50.19, and who

(1) has not been previously convicted of any criminal offense, and

(2) was age sixteen or seventeen at the time of the offense

may apply to the court for a deferral of proceedings without entry of judgment, and for placement on supervised probation upon such reasonable terms and conditions as the court may require. If the court, in its discretion, defers proceedings pursuant to this section, it shall place the defendant on supervised probation for not less than one year, in addition to any other conditions. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no previous criminal convictions.

(b) Upon fulfillment of the terms and conditions of the probation provided for in subsection (a) of this section, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon

conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

(c) Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

(d) Upon violation of a term or condition of the probation provided for in subsection (a), the court may enter an adjudication of guilt and proceed as otherwise provided.

(e) Upon discharge and dismissal pursuant to subsection (b) of this section, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 90-96(b), (c), and (f).

(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

(g) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 1A. G.S. 14-34.1(b) reads as rewritten:

"(b) A person who willfully or wantonly discharges a weapon described in subsection (a) of this section from a vehicle towards a person, or into an occupied dwelling or into any occupied vehicle, aircraft, watercraft, or other conveyance that is in operation is guilty of a Class D felony."

SECTION 1B. G.S. 14-2.3 reads as rewritten:

"**§ 14-2.3. Forfeiture of gain acquired through ~~felonies.~~criminal activity.**

(a) Except as is otherwise provided in Article 3 of Chapter 31A, in the case of any violation of Article 13A of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any ~~felon.~~offender.

(b) An action to recover such property shall be brought by either a District Attorney or the Attorney General pursuant to G.S. 1-532. The action must be brought within three years from the date of the conviction for the felony.

(c) Nothing in this section shall be construed to require forfeiture of any money or property recovered by law-enforcement officers pursuant to the investigation of a felony when the money or property is readily identifiable by the owner or guardian of the property or is traceable to him."

SECTION 2. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health

facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.17;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.17, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

~~Such person~~ Persons who are considered for bond under the provisions of subsections (d) and (e) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 3. There is appropriated to the Department of Juvenile Justice and Delinquency Prevention the sum of three million dollars ($3,000,000) for the 2007-2008 fiscal year to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention programs.

The Department of Juvenile Justice and Delinquency Prevention, in conjunction with the Governor's Crime Commission, shall develop the criteria for eligibility for these funds. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile or adult programs that meet the criteria established by the Department of Juvenile Justice and Delinquency Prevention and the Governor's Crime Commission.

The Department of Juvenile Justice and Delinquency Prevention shall report on the uses of these funds no later than April 1, 2008, to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division.

SECTION 4. Section 3 of this act becomes effective July 1, 2007. This section of the act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1358:
Street Gang Prevention Act

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	June 25, 2007
Introduced by:	Sen. Graham	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: ***This act would create a new Article in the criminal law statutes directed towards participation in street gang activities. The appropriation in the act is effective July 1, 2007. The remainder is effective on December 1, 2007, and applies to offenses committed on or after that date.***

BILL ANALYSIS:

Section 1: The act defines "criminal street gang" and "pattern of criminal gang activity, and does not apply to minors under age sixteen years old. Generally, it involves the commission of offenses under the Controlled Substances Act, or designated offenses under the criminal law statutes. The criminal prohibitions, which are classified as Class H felonies, include:

- Employment or association with a criminal street gang (pattern of criminal gang activity).
- Acquiring or maintaining real or personal property (including money) derived from gang activity (through a pattern of criminal gang activity).
- Acting as an organizer or supervisor with a street gang, to include conspiring to engage in a pattern of gang activity.
- Soliciting or encouraging another to participate in a street gang.
- Threaten to injure another with the intent to deter the person from assisting another to withdraw from a criminal street gang.
- Punish or conspire to punish or retaliate against someone who withdraws from a street gang.

Misdemeanor Enhancement: Any misdemeanor offense that is committed for the benefit of, direction of, or in association with a street gang is elevated one class higher that its normal designation. The bill also contains provisions for the seizure of contraband, and the designation of real property as a public nuisance if used in conjunction with the conduct of criminal street gang activity.

Discharge and Deferral: Offenders who are 16 or 17 at the time of the offense, and have no prior criminal convictions, would be eligible for discharge and dismissal of the charge. If the court defers proceedings, it must put the offender on supervision for a minimum of one year, along with any other conditions. Upon successful completion, the conviction would be discharged. The offender could apply for expunction of the court record.

Section 1A: Amends the "shooting into an occupied dwelling" law to provide that a person who discharges a firearm from a vehicle towards a person is guilty of a Class D felony.

Section 1B: Amends the criminal forfeiture statute to include offenses under the Street Gang Prevention Act.

Section 2: The act provides that it is a rebuttable presumption that no condition of release will assure the appearance of a person (1) charged with a violation of an offense committed on behalf of a street gang; (2) who was on pretrial release for another offense; and (3) who has a prior conviction of an offense under the criminal street gang statutes within the past five years, or the defendant's release for the offense, whichever is later. Persons considered for bond under the section may only be released by a judge upon a finding that there is a reasonable assurance that the person will appear and release does not impose an unreasonable risk of harm to the community.

Section 3: The act provides for an appropriation of ten million dollars ($3,000,000) to the Department of Juvenile Justice and Delinquency Prevention for the 2007-2008 fiscal year. The money is to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention. The grant criteria include a 25% matching requirement, with one-half as in-kind contributions. The Department shall report to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, and to the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division, no later than April 1, 2008 on the use of the funds.

PCS CHANGES

1. Redrafted findings and intent for consistency.

2. Amended definition of "Criminal Street Gang Activity" to require that acts are committed with the specific intent to further the person's involvement in the street gang.

3. Amended the definition of "Pattern" of criminal street gang activity:

    a. To require convictions (not just incidents) of criminal street gang activity, and

    b. Limit a charge based upon a pattern only to those offenses that have not previously been used to establish a charge based upon a pattern of offenses.

4. Amended the seizure and forfeiture provision to comply with current procedures for forfeitures in a criminal case.

5. Amended the real property nuisance procedures to clarify that the provision is not applicable to innocent owners or possessors.

6. Amended the provision that criminalizes discharging a weapon from a vehicle to require that the weapon be discharged towards a person.

EFFECTIVE DATE: The appropriation is effective July 1, 2007. The remainder of the act is effective for offenses occurring on or after December 1, 2007.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 16

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/26/07

S. B. No. 1358 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Soles

1 moves to amend the bill on page 1, line 12
2 ( ) WHICH CHANGES THE TITLE
3 by through page 2, line 11 by rewriting
4
5 those lines to read:
6
7 "§ 14-50.16. Reserved for future codification.".
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment 17

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/26/07

S. B. No. 1358 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen) CLODFELTER

moves to amend the bill on page 2, line 41

( ) WHICH CHANGES THE TITLE

by deleting the word "distinguishing" and substituting the word "common".

SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

June 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
KEVIN EDWARD	DCSR
[signature]	Talon Inc
[signature]	UNC-GA
[signature]	NCSBA
Jami Fitzgerald	NC Family Policy Council
Josie Sawyer	NC Family Policy Council
Christine Wenschel	106 - Daily Bulletin

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

June 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lou Russell	CYPC
Jennifer Mahan	NHANC
BRIAN LEWIS	Covenant Wl NC's Children
Sarah Preston	ACLU-NC
Susan Hassen	WRBS
David Crawford	AIA
Todd Below	NCATL
Rob Schofield	NC Policy Watch
Jack Schofield	" "
Katharine Brown	" "
Patrick Buffkin	Nelson Mullins

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 26, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TROY D. PAGE	NC SENTENCING COMMISSION
Rita J Hogue	SBE
[signature]	[illegible]
K. Frances Cook	Charlotte-Mecklenburg Police Department
Harold R. Jackson	Charlotte-Mec/C. Police Dept.
Mark Newfield	CMPD POLICE ATTY
Boyd Cauble	City of Charlotte
Trishana McKenda ll	YAIO
[signature]	YAIO-DOA
DANIEL BAUM	KENNEDY COVINGTON

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

June 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Doc Sci	RBA/ABATE - NC Bike PAC
Alastair Macaulay	NCHBA
Henry Jones	Attorney - Raleigh
Riana Smith	Attorney - Raleigh
Fred West	DJJDP
Marvin Walters	CCRS
Elizabeth Dalton	NCRMA
Peg Dorer	Conference of DAs
Katherine Joyce	NCASA
Ginny Hevener	Sentencing Commission

SENATE JUDICIARY I COMMITTEE
(Civil)

June 28, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Thursday, June 28 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. David Hoyle, Sen. Floyd McKissick, Sen. Tony Rand, Sen. Richard Stevens, and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:09 a.m. and recognized Rep. Current, Sr. for House Bill 367, a bill increasing the criminal penalties for metal theft. A Proposed Committee Substitute was distributed and Sen. Rand moved for its adoption. The PCS was adopted through unanimous vote.

As discussion began several senators gave anecdotal account of metal thefts in their districts, including the theft of air conditioners. In the audience Bill Perry of Atlantic Scrap and Processors addressed the committee and said that the bill was not aimed at responsible operators. Sen. Rand asked to amend the bill on Page 4, Line 33, inserting to the bill that no conveyance would be forfeited unless the owner knew or thought the vehicle to be in violation. The amendment passed unanimously.

Sen. Brown moved for favorable report for a new committee substitute incorporating the Amendment and the motion passed unanimously.

Chairman Nesbitt then called on Rep. Goodwin for House Bill 698, a bill amending the child welfare laws to comply with federal laws. A Proposed Committee Substitute was distributed to members and was adopted for discussion through a motion by Sen. Jenkins. An amendment to the bill by Sen. Stevens was presented to Committee Members and passed unanimously. Staff Attorney Erika Churchill explained that changes were correct with federal child welfare laws. Sen. Clodfelter also amended the bill. Sen. Jenkins moved for favorable report for a new committee substitute incorporating the amendments and the motion passed unanimously.

House Bill 376, a Proposed Committee Substitute for HB 367, a Bill Analysis for the PCS for HB 367, the Rand Amendment to the PCS for HB 367, House Bill 698 (2nd Ed.), a Proposed Committee Substitute for the PCS to HB 698, a Bill Analysis for House Bill

698, the Stevens Amendment to HB 698, the Clodfelter Amendment to HB 698 and the Federal Requirement Certification for HB 698 are attached to these Minutes as Attachments 1, 2, 3, 3A, 4, 5, 6, 7, 8, and 9, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 367*

Committee Substitute Favorable 4/11/07

Short Title: Increase Criminal Penalty/Theft of Metals. (Public)

Sponsors:

Referred to:

February 27, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW REGULATING THE SALE OF CERTAIN METALS BY SECONDARY METALS RECYCLERS, TO ADD WIRELESS AND CABLE TELECOMMUNICATIONS EQUIPMENT TO THE STATUTE PROVIDING PENALTIES FOR THE INJURY OR DESTRUCTION OF WIRES, PHONE, TELEGRAPH, AND ELECTRICAL FIXTURES, AND TO INCREASE THE CRIMINAL PENALTIES FOR VIOLATIONS OF THOSE REGULATIONS OF THE INJURY OR DESTRUCTION OF WIRES, PHONE, TELEGRAPH, AND ELECTRICAL FIXTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-11 reads as rewritten:

"**§ 66-11. Dealing in regulated metals property; violations of section Class 1 misdemeanor.**

(a) Definitions. – As used in this section:

(1) "Law enforcement officer" means any duly constituted law enforcement officer of the State or of any municipality or county.

(2) "Regulated metals property" means all ferrous and nonferrous metals.

(3) "Secondary metals recycler" means any person, firm, or corporation in the State:

a. That, from a fixed location or otherwise, is predominately engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having

an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

(4) "Fixed location" means any site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(b) Records Required. –

(1) A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property.

(2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:

a. The name and address of the secondary metals recycler.

b. The name, initials, or other identification of the individual entering the information.

c. The date of the transaction.

d. The weight of the regulated metals property purchased.

e. The description made in accordance with the custom of the trade of the type of regulated metals property purchased.

f. The amount of consideration given for the regulated metals property.

g. The name and address of the vendor of the regulated metals property.

h. The drivers license number or identification card number issued by the Division of Motor Vehicles of the person delivering the regulated metals property to the secondary metals recycler, or, if the person delivering the regulated metals property does not have a drivers license or an identification card issued by the Division of Motor Vehicles, a signed written statement that the delivery person does not have a drivers license or an identification card issued by the Division of Motor Vehicles.

(3) A secondary metals recycler shall keep and maintain the information required under this subsection for not less than two years from the date of the purchase of the regulated metals property.

(4) The following additional information shall be maintained for transactions in which a secondary metals recycler purchases copper, brass, or aluminum other than beverage or food cans:

a. The source and physical address where the metals were obtained by the seller.

b. A photocopy of the identification of the person delivering the metals property required in sub-subdivision h. of subdivision (2) of this subsection. If the secondary metals recycler has a copy of the identification of the individual on file, the secondary metals recycler may verify the identification that is on file without making a separate photocopy of each transaction.

(c) Inspection of Regulated Metals Property and Records. – During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall have the right to inspect either of the following:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler.

(2) Any and all records required to be maintained under subsection (b) of this section.

(d) Cash Transactions. – No secondary metals recycler shall purchase regulated metals property for cash consideration from other than a fixed location.

(e) Right to Restitution. – The court may order a defendant to make restitution to the secondary metals recycler for any damage or loss caused by the defendant arising out of an offense committed by the defendant.

(f) Violations. – Any person violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

(g) Exemptions. – This section shall not apply to purchases of regulated metals property from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business.

(h) Preemption. – A county or municipality shall not enact any local law, ordinance, or regulation regulating secondary metals recyclers or regulated metals property that conflicts with this section, and this law preempts all existing laws, ordinances, or regulations."

SECTION 2. G.S. 14-154 reads as rewritten:

"**§ 14-154. Injuring wires and other fixtures of telephone, telegraph, cable, and electric-power companies.**

If any person shall willfully injure, destroy or pull down any telegraph, telephone, cable telecommunications, or electric-power-transmission pedestal or pole, ~~wire, insulator or any other fixture or apparatus attached to a telegraph, telephone or electric-power transmission line~~ or any telegraph, telephone, cable telecommunications, or electric power line, wire or fiber insulator, power supply, transformer, transmission or other apparatus, equipment or fixture used in the transmission of telegraph, telephone, cable telecommunications, or electrical power service or any equipment related to wireless communications regulated by the Federal Communications Commission, he shall be guilty of a Class I Felony.~~Class 1 misdemeanor~~."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H Title change D

HOUSE BILL 367*

Committee Substitute Favorable 4/11/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H367-PCS60376-TC-41

Short Title: Increase Criminal Penalty/Theft of Metals. (Public)

Sponsors:

Referred to:

February 27, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW REGULATING THE SALE OF CERTAIN METALS BY SECONDARY METALS RECYCLERS, TO ADD WIRELESS AND CABLE TELECOMMUNICATIONS EQUIPMENT TO THE STATUTE PROVIDING PENALTIES FOR THE INJURY OR DESTRUCTION OF WIRES, PHONE, TELEGRAPH, AND ELECTRICAL FIXTURES, TO INCREASE THE CRIMINAL PENALTIES FOR VIOLATIONS OF THOSE REGULATIONS OF THE INJURY OR DESTRUCTION OF WIRES, PHONE, TELEGRAPH, AND ELECTRICAL FIXTURES, AND TO PROVIDE FOR FORFEITURE OF VEHICLES USED IN FELONIOUS THEFT OF METALS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-11 reads as rewritten:

"**§ 66-11. Dealing in regulated metals property; ~~violations of section Class 1 misdemeanor.~~ penalties.**

(a) Definitions. – As used in this section:

(1) "Law enforcement officer" means any duly constituted law enforcement officer of the State or of any municipality or county.

(2) "Regulated metals property" means all ferrous and nonferrous metals.

(3) "Secondary metals recycler" means any person, firm, or corporation in the State:

a. That, from a fixed location or otherwise, is ~~predominately~~ engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

(4) "Fixed location" means any site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(b) Records Required. –

(1) A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property.

(2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:

a. The name and address of the secondary metals recycler.

b. The name, initials, or other identification of the individual entering the information.

c. The date of the transaction.

d. The weight of the regulated metals property purchased.

e. The description made in accordance with the custom of the trade of the type of regulated metals property ~~purchased.~~purchased and the physical address where the regulated metals were obtained by the seller, and a statement signed by the seller or the seller's agent certifying that the seller or the seller's agent has the lawful right to sell and dispose of the property.

f. The amount of consideration given for the regulated metals property.

g. The name and address of the vendor of the regulated metals ~~property.~~property and the license plate number of the vehicle used to deliver the regulated metals.

h. ~~The~~ A photocopy or electronic scan of the drivers license ~~number~~ or state or federally issued photo identification card ~~number issued by the Division of Motor Vehicles~~ of the person delivering the regulated metals property to the secondary metals ~~recycler, or, if~~ recycler. If the secondary metals recycler has a copy of the valid photo identification of the person delivering the regulated metals property on file, the secondary metals recycler must examine the photo identification, but may

reference the photo identification that is on file without making a separate photocopy or electronic scan for each subsequent transaction. If the person delivering the regulated metals property does not have a drivers license or ~~an~~ a state or federally issued photo identification card, ~~card issued by the Division of Motor Vehicles, a signed written statement that the delivery person does not have a drivers license or an identification card issued by the Division of Motor Vehicles.~~ the secondary metals recycler shall not complete the transaction.

(3) A secondary metals recycler shall keep and maintain the information required under this subsection for not less than two years from the date of the purchase of the regulated metals property.

(c) Inspection of Regulated Metals Property and Records. – During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall have the right to inspect either of the following:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler.

(2) Any and all records required to be maintained under subsection (b) of this section.

A secondary metals recycler shall make receipts for the purchase of regulated metals property available for pickup each regular workday if requested by the sheriff or chief of police of the county or the chief of police of the municipality in which the secondary metals recycler is located.

(d) ~~Cash Transactions.~~Purchase Limitations. – No secondary metals recycler shall ~~purchase~~ do any of the following:

(1) Purchase regulated metals property for cash consideration from other than a fixed location.

(2) Purchase or receive regulated metals property from minors from other than a fixed location, provided that this provision does not apply to the purchase of aluminum in the form of beverage or food cans.

(d1) Retain Metals for Seven Days Before Selling or Altering. – Any secondary metals recycler owner convicted of a felonious violation of this Chapter, G.S. 14-71, 14-71.1, or 14-72 shall hold and retain any regulated metals product, except for iron and steel products, for seven days from the date of purchase before selling, dismantling, defacing, or in any manner altering or disposing of the regulated metals property.

(e) Right to Restitution. – The court may order a defendant to make restitution to the secondary metals recycler for any damage or loss caused by the defendant arising out of an offense committed by the defendant.

(f) Violations. – Unless the conduct is covered by some other provision of law providing greater punishment, any ~~Any~~ person knowingly and willfully violating any of the provisions of this section shall be guilty of a Class 1 ~~misdemeanor.~~misdemeanor for a first offense. A second or subsequent violation of this section is a Class I felony.

(g) Exemptions. – This section shall not apply to purchases of regulated metals property from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business.

(h) Preemption. – A county or municipality shall not enact any local law, ordinance, or regulation regulating secondary metals recyclers or regulated metals property that conflicts with this section, and this law preempts all existing laws, ordinances, or regulations."

SECTION 2. G.S. 14-154 reads as rewritten:

"**§ 14-154. Injuring wires and other fixtures of telephone, telegraph, and electric-power companies.**

If any person shall willfully injure, destroy or pull down any telegraph, telephone, cable telecommunications, or electric-power-transmission pedestal or pole, ~~wire, insulator or any other fixture or apparatus attached to a telegraph, telephone or electric-power-transmission line~~ or any telegraph, telephone, cable telecommunications, or electric power line, wire or fiber insulator, power supply, transformer, transmission or other apparatus, equipment or fixture used in the transmission of telegraph, telephone, cable telecommunications, or electrical power service or any equipment related to wireless communications regulated by the Federal Communications Commission, ~~he~~that person shall be guilty of a Class I Felony.~~Class 1 misdemeanor~~."

SECTION 3. Article 1 of Chapter 66 of the General Statutes is amended by adding the following new section to read:

"**§ 66-11.2. Forfeiture of vehicles used to transport unlawfully obtained regulated metals property.**

(a) Vehicles which are used or intended for use to convey or transport, or in any manner to facilitate the conveyance or transportation of unlawfully obtained regulated metals property, as defined by this Article, are subject to forfeiture, except that:

(1) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission, committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

(2) No conveyance shall be forfeited unless the violation involved is a felony;

(3) A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of or consented to the act or omission;

(4) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section.

(b) Any vehicle subject to forfeiture under this section may be seized by any law enforcement officer upon process issued by any district or superior court having jurisdiction over the vehicle except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or a search under a search warrant;
(2) The vehicle subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this section.

(c) Vehicles taken or detained under this section shall not be repleviable, but shall be deemed to be in custody of the law enforcement agency seizing it, which may:
(1) Place the vehicle under seal; or
(2) Remove the vehicle to a place designated by it; or
(3) Request that the North Carolina Department of Justice take custody of the vehicle and remove it to an appropriate location for disposition in accordance with law.

Any vehicle seized by a State, local, or county law enforcement officer shall be held in safekeeping as provided in this subsection until an order of disposition is properly entered by the judge.

(d) Whenever a vehicle is forfeited under this section, the law enforcement agency having custody of it may:
(1) Retain the vehicle for official use; or
(2) Sell any forfeited vehicle, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale, including expense of seizure, maintenance of custody, advertising, and court costs; or
(3) Transfer any vehicles which are forfeited under the provisions of this section to the North Carolina Department of Justice when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice, said vehicle may be of official use to the North Carolina Department of Justice;
(4) Upon determination by the director of any law enforcement agency that a vehicle transferred pursuant to the provisions of this section is of no further use to said agency for use in official investigations, such vehicle may be sold as surplus property in the same manner as other vehicles owned by the law enforcement agency, and the proceeds from such sale after deducting the cost of sale shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in the county in which said vehicle was seized; provided, that any vehicle transferred to any law enforcement agency under the provisions of this section which has been modified to increase speed shall be used in the performance of official duties only and not for resale, transfer, or disposition other than as junk."

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 367:
Increase Criminal Penalty/Theft of Metals

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 28, 2007
Introduced by:	Reps. Current, Neumann, Moore	**Summary by:**	Kara McCraw
Version:	PCS to Second Edition H367-CSTC-41[v.5]		Committee Counsel

SUMMARY: ***The PCS for House Bill 367 would add new record-keeping requirements and penalties to G.S. 66-11, include wireless and cable communications in G.S. 14-154 (Injury to wires) and increase the offense to a Class I felony, and provide for forfeiture of vehicles used in transporting unlawfully obtained regulated metals property.***

[As introduced, this bill was identical to S201, as introduced by Sen. Rand, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: *G.S. 66-11* regulates dealings in regulated metals property and includes the following provisions.

"Regulated metals property" is defined as all ferrous and nonferrous metals.

"Secondary metals recyclers" are defined as persons, firms, or corporations:

1) predominantly engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose, or
2) in the business of performing the manufacturing process to convert such metals into raw material products consisting of prepared grades and having existing or potential economic value, or
3) having the facilities to perform the manufacturing process to convert such metals into raw material products by a number of methods, but not including the exclusive use of hand tools.

Records Required: Secondary metals recyclers must maintain the following information for not less than 2 years from the date of purchase of regulated metals property:

- Name and address of the secondary metals recycler.
- Identification of individual entering information.
- Date of transaction.
- Weight of regulated metals property purchased.
- Description of type of regulated metals property purchased in accordance with the custom of the trade.
- Amount of consideration given for the regulated metals property.
- Name and address of the vendor of the regulated metals property.
- Drivers license or identification card number issued by the DMV of the person delivering the regulated metals property. If the delivery person does not have one of the above identifications, a signed, written statement to that effect.

A law enforcement officer may inspect both purchased regulated metals property and records during usual and customary business hours.

Violations: Violations of the section are a Class 1 misdemeanor.

Exemptions: The requirements of the section do not apply to purchases of regulated metals property from a manufacturing, industrial, or other commercial vender that generates or sells regulated metals property in the ordinary course of business.

G.S. 14-154: G.S. 14-154 makes it a Class 1 misdemeanor to willfully injure, destroy, or pull down telegraph, telephone, or electric-power-transmission poles, wires, insulators, or any other fixtures or apparatus attached to such lines.

BILL ANALYSIS: The PCS to House Bill 367 would change the following in G.S. 66-11:

Definitions: Would eliminate the word "predominantly" from the definition of secondary metals recycler.

Additional Records Requirements:

- The physical address where regulated metals property were obtained by the seller, and a statement signed by the seller or seller's agent certifying the lawful right to sell and dispose of the property.
- The license number of the vehicle used to deliver the regulated metals property.
- A photocopy or scan of the drivers license or state or federally issued photo identification card of the person delivering the regulated metals property. A copy of the valid identification of the delivery person on file may be referenced in the record without a separate photocopy for each transaction. If the delivery person does not have a drivers license, state, or federal identification card, the transaction shall not be completed.

Inspections: Would add a new requirement that secondary metals recyclers must make receipts for sales of regulated metals property available for pickup each regular workday at the request of local law enforcement.

Purchase Limitations: Would add a new requirement that secondary metals recyclers could not purchase or receive regulated metals property from minors other than at a fixed location, except for purchase of aluminum cans.

Retention of Metals: Would require a secondary metals recycler convicted of a felonious violation of Chapter 66 (Commerce and Business), G.S. 14-71 (Receiving Stolen Goods), G.S. 14-71.1 (Possessing Stolen Goods), or G.S. 14-72 (Larceny of Property) to hold or retain any regulated metals product, other than iron and steel, for 7 days after purchase before in any way disposing of or selling the property.

Violations: Unless the conduct is covered by some other provision of law providing greater punishment, knowing and willful violations of the section shall be a Class 1 misdemeanor for a first offense and a Class I felony for a second or subsequent violation.

House Bill 367 would add to **G.S. 14-154** willfully injuring, destroying, or pulling down any equipment related to cable telecommunications or wireless communications regulated by the Federal Communications Commission, and would increase the penalty for violations to a Class I felony.

Forfeiture of Vehicles: The PCS would add a new section to Article 1 of Chapter 66 providing for the forfeiture of vehicles used to transport unlawfully obtained regulated metals property as follows.

- Vehicles used or intended for use to transport unlawfully obtained regulated metals property are subject to forfeiture, with the following exceptions:
  - The vehicle was unlawfully in the possession of a person other than the owner.
  - The violation involved was not a felony.
  - A vehicle encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of and did not consent to the violation.
- Vehicles subject to forfeiture may be seized by any law-enforcement officer upon process issued by any district or superior court having jurisdiction over the vehicle. A vehicle may be seized without process when:
  - The seizure is incident to an arrest or a search under a search warrant, and
  - The vehicle has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this Article.
- Vehicles must be held in safekeeping until an order of disposition is properly entered by the judge. Vehicles taken under this section are not repleiveable, and are deemed to be in custody of the seizing law-enforcement agency , which may:
  - Place the vehicle under seal, or
  - Remove the vehicle to a place designated by it, or
  - Request the Department of Justice (DOJ) take custody and remove it to an appropriate location for disposition in accordance with law.
- When a vehicle is forfeited, the law-enforcement agency having custody may:
  - Retain the vehicle for official use.
  - Sell the vehicle, with proceeds used for payment of all proper expenses for forfeiture and sale.
  - Transfer the vehicle to the DOJ when, in the discretion of the presiding judge and upon application of the DOJ, the vehicle may be officially used by the DOJ.
  - Upon determination by the director of the law-enforcement agency that a transferred vehicle is of no further use to the agency for official investigations, the vehicle may be sold as surplus property. After deduction of the costs of the sale, the proceeds must be paid to the proper officer for the school fund of the county in which the vehicle was seized.

EFFECTIVE DATE: This bill would become effective December 1, 2007 and would apply to offenses committed on or after that date.

H0367e2-SMTC-CSTC

Attachment 3A

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 367 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Rand
Sen.)

moves to amend the bill on page 4, line 33

( ) WHICH CHANGES THE TITLE

by inserting the following subsection

"(d) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section."

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 698
Committee Substitute Favorable 4/30/07

Short Title: Amend Child Welfare Laws/Comply W/Fed Laws.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND EXISTING CHILD WELFARE LAWS TO COMPLY WITH FEDERAL LAW AND REGULATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-506(b) reads as rewritten:

"(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker ~~an opportunity~~the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings."

SECTION 2. G.S. 7B-901 reads as rewritten:

"**§ 7B-901. Dispositional hearing.**

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have ~~an opportunity~~the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

SECTION 3. G.S. 7B-906(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter.

The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~the right to be heard."

SECTION 4. G.S. 7B-907(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~the right to be heard."

SECTION 5. G.S. 7B-908 reads as rewritten:

"§ 7B-908. Post termination of parental rights' placement court review.

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a

county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is ~~placed for adoption and the adoption petition is filed by the adoptive parents:~~the subject of a decree of adoption:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~the right to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile ~~has been placed for~~is the subject of a decree of adoption prior to the date scheduled for the review, written notice of ~~said placement~~the issuance of the decree of adoption shall be given to the clerk to be placed in the court file, and the

review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified."

SECTION 6. G.S. 7B-909 reads as rewritten:

"**§ 7B-909. Review of agency's plan for placement.**

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters in any case where:

(1) One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or

(2) Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.

~~(b) In any case where an adoption is dismissed or withdrawn and the juvenile returns to foster care with a department of social services or a licensed private child-placing agency, then the department of social services or licensed child-placing agency shall notify the clerk, within 30 days from the date the juvenile returns to care, to calendar the case for review of the agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters.~~

(c) Notification of the court ~~required~~ under ~~subsection (a) or (b) of~~ this section shall be by a petition for review. The petition shall set forth the circumstances necessitating the review under subsection (a) ~~or (b)~~ of this section. The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is ~~placed for adoption and the adoption petition is filed by the adoptive parents.~~the subject of a decree of adoption. The initial review and all subsequent reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal."

SECTION 7. G.S. 48-1-101(5a) reads as rewritten:

"In this Chapter, the following definitions apply:

...

(5a) "Criminal history" means a county, State, or federal ~~criminal history of~~ conviction of a felony by a court of competent jurisdiction or a pending felony 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. 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 North Carolina crimes listed in this subdivision, such crimes also include~~crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; or similar crimes under federal law or under the laws of other states."

SECTION 8. 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 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,~~in accordance with G.S. 48-3-309(b), make a determination 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 9. G.S. 48-3-309(b) reads as rewritten:

"(b) A county department of social services shall issue an unfavorable preplacement assessment to a prospective adoptive parent if an individual required to submit to a criminal history check pursuant to subsection (a) of this section has a criminal history. A county department of social services shall issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines, pursuant to G.S. 48-3-303(e), that, based on other criminal convictions, whether felony or misdemeanor, revealed by the criminal ~~histories,~~histories checked pursuant to subsection (a) of this section, 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."

SECTION 10. G.S. 48-3-309(d) reads as rewritten:

"(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, 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 AND ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO RESIDE IN THE PROSPECTIVE ADOPTIVE HOME.

"Criminal history" means a county, ~~state,~~State, or federal ~~criminal history of~~ conviction of a felony by a court of competent jurisdiction or a pending felony 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, 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;~~crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; 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 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 the prospective adoptive parent is denied a favorable preplacement assessment by a county department of social services as a result of a criminal history check

as required under G.S. 48-3-309(a), the prospective adoptive parent may request a review of the assessment pursuant to G.S. 48-3-308(a).

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

SECTION 11. G.S. 131D-10.2(6a) reads as rewritten:

"For purposes of this Article, unless the context clearly implies otherwise:

...

(6a) "Criminal History" means a county, ~~state,~~State, or federal ~~criminal history of~~ conviction of a felony by a court of competent jurisdiction or a pending felony 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. 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 North Carolina crimes listed in this subdivision, such crimes also include~~crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; or similar crimes under federal law or under the laws of other states.

...."

SECTION 12. G.S. 131D-10.3A(c) reads as rewritten:

"(c) The Department shall prohibit an individual from providing foster care by denying or revoking the license to provide foster care if an individual required to submit to a criminal history check pursuant to subsection (a) of this section has a criminal

history. 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 other criminal convictions, whether felony or misdemeanor, revealed by the criminal history check of the individuals required to be checked pursuant to subsection (a) of this section."

SECTION 13. G.S. 131D-10.3A(e) reads as rewritten:

"(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,~~State, and federal ~~convictions~~ conviction of a felony by a court of competent jurisdiction 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;~~felony indictment of a crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; 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."

SECTION 14. This act is effective when it becomes law.

HOUSE BILL 698: Amend Child Welfare Laws/Comply W/Fed Laws.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 27, 2007
Introduced by:	Reps. Glazier, Goodwin, Barnhart, Parmon	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 698 would amend various child welfare laws to comply with federal law changes and requirements.***

[As introduced, this bill was identical to S981, as introduced by Sen. Boseman, which is currently in Senate Judiciary I (Civil).]

BILL ANALYSIS AND CURRENT LAW:

SECTIONS 1-6.

Current Law: At various hearings involving child protective services, the juvenile or the juvenile's guardian ad litem and the juvenile's parent, guardian, custodian or caretaker must be given an opportunity to be heard and present evidence. In addition, North Carolina law provides that a court must conduct placement reviews of a juvenile every six months until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents. No reviews are held after that unless the adoption is dismissed or withdrawn and the juvenile returns to foster care.

Bill Analysis: The bill changes the existing requirement that a juvenile or the juvenile's guardian ad litem and the juvenile's parent, guardian, custodian or caretaker be given an "opportunity" to be heard at various custody hearings to state that those persons must be given the "right" to be heard. P.L. 109-239, the federal Safe and Timely Interstate Placement Act of 2006 made changes that now require caregivers the "right" to be heard instead of just an "opportunity". This change would be a conforming change with the federal laws.

The bill also extends court reviews of a juvenile's placement until a decree of adoption. According to the Department of Health and Human Services, after the last federal audit, the State was notified that the current law needed to be changed in order for the State to continue to receive federal monies for children who remain in foster care until a decree of adoption.

SECTIONS 7-13.

Current Law: North Carolina has mandatory criminal background checks on prospective adoptive parents who wish to adopt a minor who is in the custody or placement responsibility of a county department of social services and on individuals who would like to provide foster care. These criminal background checks are also conducted on all persons 18 or older who live in the prospective adoptive home or foster home and include convictions or pending felony or misdemeanor indictments that bear upon an individual's fitness to have responsibility for the safety and well being of children. Under 42 U.S.C. 671, these checks are also required in order to qualify for federal payments for foster care and adoption assistance. The federal statutes have particular requirements on the background checks but provided that the states could have different procedures for the background checks. In 2006, federal law was amended in the Adam Walsh Child Protection and Safety Act, P.L. 109-248. The provision that allowed states to follow their own procedures for criminal background checks has been eliminated and that elimination is effective October 1, 2008. All states will have to conform to the federal requirements for the criminal history checks in order to continue to be eligible for the federal assistance.

Bill Analysis: The bill would change the definition of "criminal history" in the adoption and foster care placement statutes to conform to the federal requirements. Pending felony indictments will still be a part of the "criminal history" definition but not misdemeanors.

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

H0698e2-SMST

Drupti Chauhan contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 698
Committee Substitute Favorable 4/30/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H698-PCS70574-ST-81

Short Title: Amend Child Welfare Laws/Comply W/Fed Laws.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND EXISTING CHILD WELFARE LAWS TO COMPLY WITH FEDERAL LAW AND REGULATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-506(b) reads as rewritten:

"(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker ~~an opportunity~~the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings."

SECTION 2. G.S. 7B-901 reads as rewritten:

"**§ 7B-901. Dispositional hearing.**

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have ~~an opportunity~~the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

SECTION 3. G.S. 7B-906(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter. The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~the right to be heard."

SECTION 4. G.S. 7B-907(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~the right to be heard."

SECTION 5. G.S. 7B-908 reads as rewritten:

"**§ 7B-908. Post termination of parental rights' placement court review.**

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is ~~placed for adoption and the adoption petition is filed by the adoptive parents:~~the subject of a decree of adoption:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~the right to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile ~~has been placed for~~is the subject of a decree of adoption prior to the date scheduled for the review, written notice of ~~said placement~~the issuance of the decree of adoption shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified."

SECTION 6. G.S. 7B-909 reads as rewritten:

"**§ 7B-909. Review of agency's plan for placement.**

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters in any case where:

(1) One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or

(2) Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.

~~(b) In any case where an adoption is dismissed or withdrawn and the juvenile returns to foster care with a department of social services or a licensed private child-placing agency, then the department of social services or licensed child-placing agency shall notify the clerk, within 30 days from the date the juvenile returns to care, to calendar the case for review of the agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters.~~

(c) Notification of the court ~~required~~ under ~~subsection (a) or (b) of~~ this section shall be by a petition for review. The petition shall set forth the circumstances necessitating the review under subsection (a) ~~or (b)~~ of this section. The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is ~~placed for adoption and the adoption petition is filed by the adoptive parents.~~the subject of a decree of adoption. The initial review and all subsequent reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal."

SECTION 7. G.S. 48-1-101(5a) reads as rewritten:

"In this Chapter, the following definitions apply:

...

(5a) "Criminal history" means a county, State, or federal ~~criminal history of~~ conviction of a felony by a court of competent jurisdiction or a pending felony 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. 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 North Carolina crimes listed in this subdivision, such crimes also include~~crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; or similar crimes under federal law or under the laws of other states."

SECTION 8. 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 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,~~in accordance with G.S. 48-3-309(b), make a determination 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 9. G.S. 48-3-309(b) reads as rewritten:

"(b) A county department of social services shall issue an unfavorable preplacement assessment to a prospective adoptive parent if an individual required to submit to a criminal history check pursuant to subsection (a) of this section has a criminal history. A county department of social services shall issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines, pursuant to G.S. 48-3-303(e), that, based on other criminal convictions, whether felony or misdemeanor, ~~the criminal~~ 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."

SECTION 10. G.S. 48-3-309(d) reads as rewritten:

"(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, 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 AND ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO RESIDE IN THE PROSPECTIVE ADOPTIVE HOME.

"Criminal history" means a county, ~~state,~~State, or federal ~~criminal history of~~ conviction of a felony by a court of competent jurisdiction or a pending felony 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, 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;~~crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; 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 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 the prospective adoptive parent is denied a favorable preplacement assessment by a county department of social services as a result of a criminal history check as required under G.S. 48-3-309(a), the prospective adoptive parent may request a review of the assessment pursuant to G.S. 48-3-308(a).

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

SECTION 11. G.S. 131D-10.2(6a) reads as rewritten:

"For purposes of this Article, unless the context clearly implies otherwise:

...

(6a) "Criminal History" means a county, ~~state,~~State, or federal ~~criminal history of~~ conviction of a felony by a court of competent jurisdiction or a pending felony 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. 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 North Carolina crimes listed in this subdivision, such crimes also include~~crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; or similar crimes under federal law or under the laws of other states.

...."

SECTION 12. G.S. 131D-10.3A(c) reads as rewritten:

"(c) The Department shall prohibit an individual from providing foster care by denying or revoking the license to provide foster care if an individual required to submit to a criminal history check pursuant to subsection (a) of this section has a criminal history. 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 other criminal convictions, whether felony or misdemeanor. ~~the criminal history of the individuals required to be checked pursuant to subsection (a) of this section.~~"

SECTION 13. G.S. 131D-10.3A(e) reads as rewritten:

"(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,~~State, and federal ~~convictions~~ conviction of a felony by a court of competent jurisdiction 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;~~felony indictment of a crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was

committed within the past five years; 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."

SECTION 14. This act becomes effective October 1, 2007.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 7

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 698 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Stevens
Sen.)

moves to amend the bill on page 9, line 18

( ) WHICH CHANGES THE TITLE

by _____

rewriting that line to read:

"SECTION 14. This act is effective October 1, 2007.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment 8

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

H B. No. 1098 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Clodfelter
Sen.)

1 moves to amend the bill on page 5, lines 39-40
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 rewriting those lines to read:
5 _____
6 "convictions, whether felony or misdemeanor, the prospective
7 _____
adoptive parent is"; and on
9 _____
10 page 8, lines 4-5 by rewriting those lines to
11 read:
12 "based on other criminal convictions, whether
13 felony or misdemeanor.".
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Session 2007

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

House Bill 698

Amend Child Welfare Laws/Comply W/Fed Laws

Bill Primary Sponsor(s):	Glazier, Goodwin, Barnhart, Parmon	H698 2nd Edition
Relevant Federal Law:	*PL 109-239; 42 U.S.C.A. 675; PL 109-248; 42 U.S.C.A. 671*	
☒ 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 698 would change the existing requirement that a juvenile, or the juvenile's parent, guardian, custodian or caretaker be given an "opportunity" to be heard at various custody hearings to state that those persons must be given the "right" to be heard. The federal Safe and Timely Interstate Placement Act of 2006 made changes that now require caregivers the "right" to be heard instead of just an "opportunity".

Section 6 of the bill would extend court reviews of a child's placement until a decree of adoption.

Under 42 U.S.C. 671, criminal history checks of prospective foster and adoptive parents are required to be conducted in order for the State to qualify for federal payments for foster care and adoption assistance. 42 U.S.C. 671 has particular requirements on the background checks but also provides that the states could have different procedures for the background checks. In 2006, federal law was amended in the Adam Walsh Child Protection and Safety Act. 42 U.S.C. 671, the provision that allowed states to follow their own procedures for criminal background checks has been eliminated and that elimination is effective October 1, 2008. All states will have to conform to the federal requirements for the criminal history checks in order to continue to be eligible for the federal assistance. The bill would change the definition of "criminal history" in the adoption and foster care placement statutes to conform to the federal requirements. Pending felony indictments will still be a part of the "criminal history" definition but not misdemeanors.

COMPLIANCE CONSIDERATIONS

According to the Department of Health and Human Services, the State was notified that current State law which allows the court of reviews of children in foster care to stop at the filing of a petition for adoption must be changed if the State was to continue to receive IV-E reimbursement for children who remain in foster care through the Adoption Decree. Section 6 of the bill addresses this change. However, there has not been any written correspondence from any federal agency mandating the change. By requiring placement reviews to be conducted by the court until an adoption decree is entered, the bill may go further than what is provided for in federal law.

The federal laws do not require that criminal history checks include pending felony indictments. The bill would keep pending felony indictments as a part of the "criminal history" definition so this may go further than is required by federal law.

TECHNICAL OR MECHANICAL CONSIDERATIONS

REVIEW AND APPROVAL

Prepared By: _____ **Date:** _____

Drupti Chauhan
Staff Attorney

Approved By: _____ **Date:** _____

Terrence D. Sullivan
Director of Research

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 28, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	MDV
[illegible]	BOA
K. Hawkins	Progress Energy
R. Paul Wilms	NCHBA
Lori Ann Harris	[illegible]
[illegible]	RCSO
W.A. Morton	GSO PD
Reginald Creighton	RMP
[illegible]	Gov. Office
Christine Wunsche	106 - Daily Bulletin
Russ Dubiszky	IFNC
Joe Stewart	IFNC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 28, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Smith	DHHS
Paul Waddle	DSS
Alastair Macaulay	NCMBA
Lisa Martin	NC HBA
Andrew Meeker	NC AFC
Barb Fox	TVC
John McMillan	NFIB

AGENDA
Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Thursday, June 28, 2007
10:00 a.m.
Room 1027

1. **Call Meeting to Order.**

2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 367	Increase Criminal Penalty/Theft of Metals.	Representative Neumann, IV Representative Moore Representative Current, Sr.
HB 698	Amend Child Welfare Laws/Comply W/Fed Laws.-AB	Representative Parmon Representative Barnhart Representative Goodwin Representative Glazier

Adjournment.

Principal Clerk ____
Reading Clerk ____

Revised agenda – HB 454 has been removed from the Agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary I (Civil)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 28, 2007	10:00 AM	1027

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 367	Increase Criminal Penalty/Theft of Metals.	Representative Neumann, IV Representative Moore Representative Current, Sr.
HB 698	Amend Child Welfare Laws/Comply W/Fed Laws.-AB	Representative Parmon Representative Barnhart Representative Goodwin Representative Glazier

Senator Martin L. Nesbitt, Jr., Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Tuesday, July 03, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **367** Increase Criminal Penalty/Theft of Metals.

Draft Number:	PCS 60376
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **698** Amend Child Welfare Laws/Comply W/Fed Laws.-AB

Draft Number:	PCS 70574
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

SENATE JUDICIARY I COMMITTEE
(Civil)

July 3, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Tuesday, July 3 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Member Charlie Albertson, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Ellie Kinnaird, Sen. Floyd McKissick, Sen. Richard Stevens, and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:22 a.m. and recognized Sen. Clodfelter regarding Senate Bill 1358, an act to address and prevent street gang activity among teens. Sen. Clodfelter handled the bill due to the absence of Sen. Graham.

A Proposed Committee Substitute was distributed among members. Sen. Clodfelter moved for adoption of the PCS and the motion carried unanimously. Sen. Clodfelter said that the members had worked with the bill through two subcommittees and that the bill would travel through four committees before making it to Chamber.

Staff Attorney Hal Pell was asked about changes to the revised Bill. Mr. Pell explained that penalties for gang members recruiting younger members were heightened to a Class F felony. Discussion then ensued among members.

Sen. Tillman motioned for favorable report for the committee substitute, unfavorable to the original bill. Discussion moved to the audience. Thomas Wasileski of the North Carolina Concerned Bikers' Association told the committee that the Bill was too vague. Chairman Nesbitt then said that the committee was very careful in the drafting of the bill. Landon Adams, Executive Director of the Triangle Lost Generation Task Force urged the committee to use caution with the Bill. Sen. Berger motioned to amend the bill to change age requirements to expunge offenses. The motion failed.

Sen. Tillman's motion was before the Committee and passed with one dissenting vote from Sen. Kinnaird. The meeting was then adjourned at 10:54 a.m.

Copies of Senate Bill 1358, the Proposed Committee Substitute for SB 1358, the Bill Analysis for the PCS for SB 1358, and the failed Berger Amendment are attached to these Minutes as Attachments 1, 2, 3, and 4, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt,
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1358
PROPOSED COMMITTEE SUBSTITUTE S1358-PCS85347-RK-43

Short Title: Street Gang Prevention Act. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 13A.

"North Carolina Street Gang Prevention Act.

"**§ 14-50.15. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Prevention Act".

"**§ 14-50.16. Definitions.**

The following definitions apply in this Article:

(1) 'Criminal street gang' or '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 one or more felony offenses, or delinquent acts that would be felonies if committed by an adult, which has a common name, common identifying sign or symbol, and has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity.

(2) 'Criminal street gang activity' means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang or street gang. An act or acts are included if accompanied by the necessary mens rea or criminal intent,

and would be chargeable by indictment under the following laws of this State:

a. Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).

b. Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

(3) 'Pattern of criminal street gang activity' means engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity, as defined in subdivision (2) of this section, that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2007, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity. Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity.

"**§ 14-50.17. Participation in criminal street gang activity prohibited.**

(a) It is unlawful for any person employed by or associated with a criminal street gang to conduct or participate in a pattern of criminal gang activity.

(b) It is unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(c) It is unlawful for any person who acts as an organizer, supervisor, or in any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of criminal gang activity.

(d) It is unlawful for any person to cause, encourage, solicit, or coerce another to participate in criminal street gang activity.

(e) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

(f) It is unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

(g) Any person who violates

(1) Subsection (c) of this section: or

(2) Subsection (d) of this section where the person caused, encouraged, solicited, or coerced to participate in criminal street gang activity is under 16 years old,

shall be guilty of a Class F felony. Any person who violates any other provision of this section shall be guilty of a Class H felony.

(h) Any crime committed in violation of this section shall be considered a separate offense.

"**§ 14-50.18. Enhanced offense for criminal gang activity.**

A person who is convicted of a misdemeanor offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this section.

"**§ 14-50.19. Reports of disposition; criminal street gang activity.**

When a defendant is found guilty of a criminal offense other than an offense under G.S. 14-50.17 or G.S. 14-50.18, the presiding judge shall determine whether the offense involved criminal street gang activity. If the judge so determines, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal street gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes a notation of the court's determination.

"**§ 14-50.20. Contraband, seizure, and forfeiture.**

(a) All property of every kind used or intended for use in the course of, derived from, or realized through criminal street gang activity or a pattern of criminal street gang activity is subject to the seizure and forfeiture provisions of G.S. 14-2.3.

(b) In any action under this section, the court may enter a restraining order in connection with any interest that is subject to forfeiture.

(c) Innocent Activities. – The provisions of this section shall not apply to property used for criminal street gang activity, where the owner or person who has legal possession of the property does not have actual knowledge that the property is being used for criminal street gang activity.

"**§ 14-50.21. Local ordinances not preempted by State law.**

Nothing in this Article shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence that are consistent with this Article. Where local laws duplicate or supplement the provisions of this Article, this Article shall be construed as providing alternative remedies and not as preempting the field.

"**§ 14-50.22. Real property used by criminal street gangs declared a public nuisance; abatement.**

(a) Public Nuisance. – Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal street gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes.

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal street gang activity, where the owner or person who has legal

possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

"§ 14-50.23. Matters proved in criminal trial court.

A conviction of an offense defined as criminal gang activity shall preclude the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct.

"§ 14-50.24. Applicability to juveniles under the age of 16.

The provisions of this Article shall not apply to juveniles under the age of 16.

"§ 14-50.25. Conditional discharge and expunction of records for first offense.

(a) A person who is convicted of an offense under G.S. 14-50.17 or G.S. 14-50.18, and who:

(1) Has not been previously convicted of any criminal offense; and

(2) Was age 16 or 17 at the time of the offense

may apply to the court for a deferral of proceedings without entry of judgment, and for placement on supervised probation upon such reasonable terms and conditions as the court may require. If the court, in its discretion, defers proceedings pursuant to this section, it shall place the defendant on supervised probation for not less than one year, in addition to any other conditions. Prior to taking any action to discharge and dismiss under this section, the court shall make a finding that the defendant has no previous criminal convictions.

(b) Upon fulfillment of the terms and conditions of the probation provided for in subsection (a) of this section, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

(c) Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

(d) Upon violation of a term or condition of the probation provided for in subsection (a), the court may enter an adjudication of guilt and proceed as otherwise provided.

(e) Upon discharge and dismissal pursuant to subsection (b) of this section, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 90-96(b), (c), and (f).

(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

(g) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 1.(b) G.S. 14-34.1(b) reads as rewritten:

"(b) A person who willfully or wantonly discharges a weapon described in subsection (a) of this section from a vehicle towards a person, or into an occupied dwelling or into any occupied vehicle, aircraft, watercraft, or other conveyance that is in operation is guilty of a Class D felony."

SECTION 1.(c) G.S. 14-2.3 reads as rewritten:

"**§ 14-2.3. Forfeiture of gain acquired through ~~felonies.~~criminal activity.**

(a) Except as is otherwise provided in Article 3 of Chapter 31A, in the case of any violation of Article 13A of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any ~~felon.~~offender.

(b) An action to recover such property shall be brought by either a District Attorney or the Attorney General pursuant to G.S. 1-532. The action must be brought within three years from the date of the conviction for the ~~felony.~~offense.

(c) Nothing in this section shall be construed to require forfeiture of any money or property recovered by law-enforcement officers pursuant to the investigation of ~~a felony~~ an offense when the money or property is readily identifiable by the owner or guardian of the property or is traceable to him."

SECTION 2. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.17;

(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of an offense described in G.S. 14-50.17, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

~~Such person~~ Persons who are considered for bond under the provisions of subsections (d) and (e) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

SECTION 3. There is appropriated to the Department of Crime Control and Public Safety, Governor's Crime Commission, the sum of three million dollars ($3,000,000) for the 2007-2008 fiscal year to be used to provide grants for street gang violence prevention, intervention, and suppression programs.

The Governor's Crime Commission shall develop the criteria for eligibility for these funds. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Funds shall be available to public and private entities or agencies for juvenile or adult programs that meet the criteria established by the Governor's Crime Commission.

The Governor's Crime Commission shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 15, 2008, on this program. The report shall include all of the following:

(1) The grant award process.

(2) A description of each grant awarded.

(3) The performance criteria for evaluating grant programs.

(4) A list of State grants awarded in the 2007 grant cycle.

SECTION 4. Section 3 of this act becomes effective July 1, 2007. This section of the act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1358:
Street Gang Prevention Act

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	June 25, 2007
Introduced by:	Sen. Graham	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Co-Counsel

SUMMARY: ***This act would create a new Article in the criminal law statutes directed towards participation in street gang activities. The appropriation in the act is effective July 1, 2007. The remainder is effective on December 1, 2007, and applies to offenses committed on or after that date.***

BILL ANALYSIS:

Section 1: The act defines "criminal street gang" and "pattern of criminal gang activity, and does not apply to minors under age sixteen years old. Generally, it involves the commission of offenses under the Controlled Substances Act, or designated offenses under the criminal law statutes. The criminal prohibitions, which are classified as Class H felonies, include:

- Employment or association with a criminal street gang (pattern of criminal gang activity).
- Acquiring or maintaining real or personal property (including money) derived from gang activity (through a pattern of criminal gang activity).
- Acting as an organizer or supervisor with a street gang, to include conspiring to engage in a pattern of gang activity.
- Soliciting or encouraging another to participate in a street gang.
- Threaten to injure another with the intent to deter the person from assisting another to withdraw from a criminal street gang.
- Punish or conspire to punish or retaliate against someone who withdraws from a street gang.

Misdemeanor Enhancement: Any misdemeanor offense that is committed for the benefit of, direction of, or in association with a street gang is elevated one class higher that its normal designation. The bill also contains provisions for the seizure of contraband, and the designation of real property as a public nuisance if used in conjunction with the conduct of criminal street gang activity.

Discharge and Deferral: Offenders who are 16 or 17 at the time of the offense, and have no prior criminal convictions, would be eligible for discharge and dismissal of the charge. If the court defers proceedings, it must put the offender on supervision for a minimum of one year, along with any other conditions. Upon successful completion, the conviction would be discharged. The offender could apply for expunction of the court record.

Section 1A: Amends the "shooting into an occupied dwelling" law to provide that a person who discharges a firearm from a vehicle towards a person is guilty of a Class D felony.

Section 1B: Amends the criminal forfeiture statute to include offenses under the Street Gang Prevention Act.

Section 2: The act provides that it is a rebuttable presumption that no condition of release will assure the appearance of a person (1) charged with a violation of an offense committed on behalf of a street gang; (2) who was on pretrial release for another offense; and (3) who has a prior conviction of an offense under the criminal street gang statutes within the past five years, or the defendant's release for the offense, whichever is later. Persons considered for bond under the section may only be released by a judge upon a finding that there is a reasonable assurance that the person will appear and release does not impose an unreasonable risk of harm to the community.

Section 3: The act provides for an appropriation of ten million dollars ($3,000,000) to the Department of Juvenile Justice and Delinquency Prevention for the 2007-2008 fiscal year. The money is to be used to provide, in conjunction with the Governor's Crime Commission, grants for street gang violence prevention and intervention. The grant criteria include a 25% matching requirement, with one-half as in-kind contributions. The Department shall report to the House of Representatives Appropriations Subcommittee on Justice and Public Safety, and to the Senate Appropriations Subcommittee on Justice and Public Safety, and the Fiscal Research Division, no later than April 1, 2008 on the use of the funds.

PCS CHANGES

1. Redrafted findings and intent for consistency.

2. Amended definition of "Criminal Street Gang Activity" to require that acts are committed with the specific intent to further the person's involvement in the street gang.

3. Amended the definition of "Pattern" of criminal street gang activity:

   a. To require convictions (not just incidents) of criminal street gang activity, and

   b. Limit a charge based upon a pattern only to those offenses that have not previously been used to establish a charge based upon a pattern of offenses.

4. Amended the seizure and forfeiture provision to comply with current procedures for forfeitures in a criminal case.

5. Amended the real property nuisance procedures to clarify that the provision is not applicable to innocent owners or possessors.

6. Amended the provision that criminalizes discharging a weapon from a vehicle to require that the weapon be discharged towards a person.

EFFECTIVE DATE: The appropriation is effective July 1, 2007. The remainder of the act is effective for offenses occurring on or after December 1, 2007.

Attachment 4

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/26/07

S. B. No. 1358 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Berger

moves to amend the bill on page 4, line 8

( ) WHICH CHANGES THE TITLE

by deleting the phrase "16." and substituting the phrase "13.".

and on page 4, line 13 by rewriting the line to read

"(2) was under age 18 at the time of the offense."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Preston	ACLU-NC
Rob Schofield	NC Policy Watch
Ginny Hevener	NC Sentencing Commission
TROY PAGE	" " "
Fred West	DJJDP
Amy McConkey	Smith Anderson
Marc Nichols	NCSHP
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
ROBERT M. ZIMMERS	NC DOA
Jennifer Mahan	NHANC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Landon J. Adams	Triangle Lost Generation Task Force, Inc.
JACK REGISTER	National Assoc of Social Workers - NC Chapter
Derek Graham	DPI
Wayne Lingle	NC Prison Gang Assoc.

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, July 3, 2007
10:00 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 454	Identity Theft.	Representative Folwell Representative Spear
HB 1284	Breach/Construction Contract Accrual Date	Representative Stam
HB 1536	Limit Liability of LPG Dealer/Certain Others.	Representative Gibson, III
SB 1179	Limit Liability of LPG Dealer/Certain Others.	Senator Albertson
SB 1358	Street Gang Prevention Act.	Senator Graham

Pulled

Per adopted: Tillman - Gov. Bus - Berger - Davis

3. Adjournment.

Referred to Finance

SENATE JUDICIARY I COMMITTEE
(Civil)

July 10, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Tuesday, July 10 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Vice Chairman R. C. Soles, Member Charlie Albertson, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Malcolm Graham, Sen. David Hoyle, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Richard Stevens, and Sen. Jerry Tillman.

Vice-Chairman Clodfelter called the meeting to order at 10:11 a.m. and recognized Sen. Albertson for House Bill 1536, an act limiting the liability of petroleum gas dealers under certain specified circumstances. Sen. Albertson noted that House Bill 1536 had a companion, Senate Bill 1179. A Proposed Committee Substitute was distributed among members. Sen. Hoyle moved for adoption of the PCS. The motion passed. Staff attorney Bill Gilkeson explained a change in the current PCS. Sen. Tillman moved for favorable report for the committee substitute, unfavorable as to original bill.

Chairman Nesbitt then recognized Rep. Folwell for House Bill 454, a bill allowing law enforcement to photograph persons without valid drivers' licenses when there is reasonable suspicion regarding the identity of the person. Chairman Nesbitt called on Sen. Clodfelter who explained that Section Two of the bill was changed and the changes were added to the Proposed Committee Substitute. Sen. McKissick motioned for favorable report. However, discussion began and after several members voiced concern regarding the bill, Chairman Nesbitt pulled the bill for further work.

A Proposed Committee Substitute for House Bill 1284 was distributed among members and Sen. Clodfelter moved for the PCS adoption. The PCS was adopted with unanimous vote. The bill was briefly discussed among members. University of North Carolina General Counsel Leslie Winner spoke from the audience and was concerned with the bill. The bill was pulled and the meeting was adjourned at 10:54 a.m.

Copies of HB 1536, Senate Bill 1179, a Proposed Committee Substitute for HB 1536, the Bill Analysis for the PCS for HB 1536, House Bill 454, a Proposed Committee Substitute for HB 454, the Bill Analysis for the PCS for HB 424, House Bill 1284, a Proposed Committee Substitute for HB 1284, and the Bill Analysis for HB 1284 are attached to these Minutes as Attachments 1,2,3,4, 5, 6, 7, 8, 9, and 10, respectively.

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1536

Committee Substitute Favorable 5/9/07

Short Title: Limit Liability of LPG Dealer/Certain Others. (Public)

Sponsors:

Referred to:

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF DEALERS OF LIQUEFIED PETROLEUM GAS AND THEIR EMPLOYEES, AGENTS, AND SUBCONTRACTORS UNDER CERTAIN SPECIFIED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 119 of the General Statutes is amended by adding a new section to read:

"**§ 119-62. Liquefied petroleum gas dealers and their employees, agents, subcontractors; liability limitations.**

(a) A dealer shall not be liable for any civil damages resulting from any act or failure to act if the alleged injury, damage, or loss claimed in the action was caused by any one or more of the following:

(1) The installation, alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, and the installation, alteration, modification, or repair was done without the knowledge and consent of the dealer.

(2) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner or for a purpose other than that for which the equipment or appliance was intended, and the use of the equipment or appliance in a manner or for a purpose other than that for which the equipment or appliance was intended took place without the knowledge and consent of the dealer.

(3) The installation of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article, and the use of the equipment or appliance in a manner not in accordance with the instructions of the

manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article took place without the knowledge and consent of the dealer.

(b) As used in this section, 'dealer' means dealer as defined in G.S. 119-54 and any employee, agent, and subcontractor of the dealer."

SECTION 2. This act becomes effective October 1, 2007, and applies to acts or omissions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1536

Committee Substitute Favorable 5/9/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1536-PCS50734-RR-37

Short Title: Limit Liability of LPG Dealer/Certain Others. (Public)

Sponsors:

Referred to:

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF DEALERS OF LIQUEFIED PETROLEUM GAS AND THEIR EMPLOYEES, AGENTS, AND SUBCONTRACTORS UNDER CERTAIN SPECIFIED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 119 of the General Statutes is amended by adding a new section to read:

"**§ 119-62. Liquefied petroleum gas dealers and their employees, agents, subcontractors; liability limitations.**

(a) A dealer shall not be liable for any civil damages resulting from any act or failure to act if the alleged injury, damage, or loss claimed in the action was caused by any one or more of the following:

(1) The installation, alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, and the installation, alteration, modification, or repair was done without the knowledge and consent of the dealer.

(2) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner or for a purpose other than that for which the equipment or appliance was intended, and the use of the equipment or appliance in a manner or for a purpose other than that for which the equipment or appliance was intended took place without the knowledge and consent of the dealer.

(3) The installation of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules

adopted under this Article, and the installation of the equipment or appliance in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article took place without the knowledge and consent of the dealer.

(b) Nothing in this section alters a dealer's duty to exercise reasonable care.

(c) As used in this section, 'dealer' means dealer as defined in G.S. 119-54 and any employee, agent, and subcontractor of the dealer."

SECTION 2. This act becomes effective October 1, 2007, and applies to acts or omissions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1179

Short Title:	Limit Liability of LPG Dealer/Certain Others.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF DEALERS OF LIQUEFIED PETROLEUM GAS AND THEIR EMPLOYEES, AGENTS, AND SUBCONTRACTORS UNDER CERTAIN SPECIFIED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 119 of the General Statutes is amended by adding a new section to read:

"**§ 119-62. Liquefied petroleum gas dealers and their employees, agents, subcontractors; liability limitations.**

(a) A dealer shall not be liable for any civil damages resulting from any act or failure to act if the alleged injury, damage, or loss claimed in the action was caused by any one or more of the following:

(1) The installation, alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, and the installation, alteration, modification, or repair was done without the knowledge and consent of the dealer.

(2) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner or for a purpose other than that for which the equipment or appliance was intended.

(3) The installation of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article.

(b) As used in this section, 'dealer' means dealer as defined in G.S. 119-54 and any employee, agent, and subcontractor of the dealer."

SECTION 2. This act is effective when it becomes law and applies to acts or omissions occurring on or after that date.

HOUSE BILL 1536:
Limit Liability of LPG Dealer/Certain Others

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 2, 2007
Introduced by:	Rep. Gibson	**Summary by:**	William R. Gilkeson
Version:	PCS to Second Edition H1536-CSRR-37		Committee Counsel

SUMMARY: This PCS for HB 1536 adds a section to Article 5 of GS Chapter 119 providing that liquid petroleum gas dealers and their employees, agents and subcontractors will not be held liable for civil damages caused by improper installation, repair, or use by others, if the dealer did not know of and consent to the action.

[As introduced, this bill was identical to S1179, as introduced by Sen. Albertson, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: Article 5 of GS Chapter 119 regulates liquefied petroleum gases. It sets forth a code of safety for the handling of liquid petroleum gas. It defines an LPG dealer. It gives the Department of Agriculture and Consumer Services the responsibility to enforce the code. The Commissioner of Agriculture has rulemaking authority under the Article. The Commissioner may petition any Superior Court judge to enjoin a violation. The Commissioner may assess civil penalties in the amount of $100 for a first violation, $300 for a second, and $500 for a third or subsequent violation. A violation of the Article carries a Class 1 misdemeanor criminal penalty.

The Article defines a dealer as someone in the business of selling LPG or installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances that use LPG.

The Article limits the liability of persons who provide assistance in an emergency or accident.

BILL ANALYSIS: The PCS provides that a liquid petroleum gas dealer, or the dealer's agent, employee, or subcontractor, is not liable for civil damages for an injury caused by one or more of the following:

1. The installation, alteration, modification, or repair of LPG equipment or an LPG appliance by another person, if the LPG dealer, etc., did not know of and consent to the installation, alteration, modification, or repair.
2. The use of LPG equipment or an LPG appliance by another person in a manner or for a purpose for which it was not intended, if the LPG dealer, etc., did not know of and consent to its being used in the manner or for the purpose for which it was not intended.
3. The installation of LPG equipment or an LPG appliance by another person in a manner not in accordance with the instructions of the manufacturer or in a manner not in accordance with the rules of Article 5 of GS Chapter 119, if the LPG dealer did not know of and consent to its being installed in that manner.

The PCS says that nothing in the new statute alters an LPG dealer's duty to exercise reasonable care.

EFFECTIVE DATE: The act is effective October 1, 2007 and applies to acts or omissions occurring on or after that date.

H1536e2-SMRR-CSRR-37

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 454

Committee Substitute Favorable 4/30/07

Short Title: Identity Theft. (Public)

Sponsors:

Referred to:

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE IDENTITY OF INDIVIDUALS BY AUTHORIZING THE TAKING OF A PHOTOGRAPH OF A PERSON OPERATING A MOTOR VEHICLE WHO DOES NOT PRODUCE A VALID DRIVERS LICENSE UPON THE REQUEST OF A LAW ENFORCEMENT OFFICER WHERE THE LAW ENFORCEMENT OFFICER HAS A REASONABLE SUSPICION REGARDING THE TRUE IDENTITY OF THE PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-502(b) reads as rewritten:

"(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor ~~Vehicles."~~Vehicles," except that a photograph may be taken of a person who operates a motor vehicle on a street or highway who does not produce a valid drivers license upon the request of a law enforcement officer where the law enforcement officer has a reasonable suspicion concerning the true identity of the operator of the motor vehicle. A photograph taken under this subsection shall be of the operator of the motor vehicle from the neck up and may be taken at the location where the citation is issued or at the jail if an arrest is made. The photograph must be retained by the law enforcement officer until conclusion of the case and may not be used for any purpose other than to confirm the identity of the alleged offender. Upon a final disposition by the court, the photograph shall be destroyed by the charging law enforcement officer or agency."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 454

Committee Substitute Favorable 4/30/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H454-CSRK-52 [v.7]

7/9/2007 10:29:55 AM

Short Title: Identity Theft. (Public)

Sponsors:

Referred to:

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE IDENTITY OF INDIVIDUALS BY AUTHORIZING THE TAKING OF A PHOTOGRAPH OF A PERSON WHO IS CITED FOR A MOTOR VEHICLE MOVING VIOLATION, WHO DOES NOT PRODUCE A VALID DRIVERS LICENSE UPON THE REQUEST OF A LAW ENFORCEMENT OFFICER, AND WHERE THE LAW ENFORCEMENT OFFICER HAS A REASONABLE SUSPICION REGARDING THE TRUE IDENTITY OF THE PERSON, AND TO PROVIDE A CAUSE OF ACTION FOR A PERSON WHOSE IDENTIFYING INFORMATION IS PUBLISHED OVER THEIR OBJECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-502 reads as rewritten:

". . .

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles. Notwithstanding the prohibition in this subsection, a photograph may be taken of a person who operates a motor vehicle on a street or highway if:

(1) the person is cited by a law enforcement officer for a motor vehicle moving violation, and

(2) the person does not produce a valid drivers license upon the request of a law enforcement officer, and

(3) the law enforcement officer has a reasonable suspicion concerning the true identity of the operator of the motor vehicle.

As used in this subsection, the phrase "motor vehicle moving violation" does not include the offenses listed in the third paragraph of G.S. 20-16(c) for which no points

are assessed, nor does it include equipment violations specified in Part 9 of Article 3 of Chapter 20 of the General Statutes.

(b1) Any photograph authorized by subsection (b) of this section and taken by a law enforcement officer or agency:

(1) Shall only be taken of the operator of the motor vehicle, and only from the neck up.

(2) Shall be taken at either the location where the citation is issued, or at the jail if an arrest is made.

(3) Shall be retained by the law enforcement officer or agency until the final disposition of the case.

(4) Shall not be used for any purpose other than to confirm the identity of the alleged offender.

(5) Shall be destroyed by the law enforcement officer or agency upon a final disposition of the charge."

. . . ."

SECTION 2. Article 2A of Chapter 75 is amended by adding a new section to read:

"**§ 75-66. Publication of Personal Information.**

(a) It shall be a violation of this section for any person to broadcast or publish to the public on radio, television, cable television, in a writing of any kind, or on the Internet, the personal information of another with actual knowledge that the person whose personal information is disclosed has previously objected to any such disclosure. As used in this section, the phrase "personal information" includes a person's first name or first initial and last name in combination with any of the following information:

(1) Social security or employer taxpayer identification numbers.

(2) Drivers license, State identification card, or passport numbers.

(3) Checking account numbers.

(4) Savings account numbers.

(5) Credit card numbers.

(6) Debit card numbers.

(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).

(8) Digital signatures.

(9) Any other numbers or information that can be used to access a person's financial resources.

(10) Biometric data.

(11) Fingerprints.

(12) Passwords.

(b) Any person whose property or person is injured by reason of a violation of this section may sue for civil damages pursuant to the provisions of G.S. 1-539.2C."

SECTION 3. G.S. 1-539.2C reads as rewritten:

"**§ 1-539.2C. Damages for identity theft.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General ~~Statutes~~ Statutes, or a violation of G.S. 75-66, may sue for civil damages. Damages may be in an amount of up to five

thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party.

(b) If the identifying information of a deceased person is used in a manner made unlawful by Article 19C of Chapter 14 of the General Statutes, or by a violation of G.S. 75-66, the deceased person's estate shall have the right to recover damages pursuant to subsection (a) of this section.

(c) The venue for any civil action brought under this section shall be the county in which the plaintiff resides or any county in which any part of the alleged violation of G.S. 75-66, G.S. 14-113.20 or G.S. 14-113.20A took place, regardless of whether the defendant was ever actually present in that county. Civil actions under this section must be brought within three years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

(d) Civil action under this section does not depend on whether or not a criminal prosecution has been or will be instituted under Article 19C of Chapter 14 of the General Statutes for the acts which are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law."

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses and violations committed on or after that date.

HOUSE BILL 454: Identity Theft

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 9, 2007
Introduced by:	Reps. Folwell, Spear	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H454-CSRK		Committee Co-Counsel

SUMMARY: The proposed committee substitute to House Bill 454 would authorize the taking of a photograph of a motor vehicle operator under specified conditions. It would also provide a cause of action for a person whose personal information is published over their objection. This act becomes effective December 1, 2007, and applies to offenses or violations committed on or after that date.

CURRENT LAW:

The taking of photographs or fingerprints is not authorized when the offense charged is a Class 2 or Class 3 misdemeanor under Chapter 20 (Motor Vehicles) of the General Statutes. Photographs, moving pictures, video or sound recordings, fingerprints, or the like may be taken to show a condition of intoxication or for other evidentiary use.

BILL ANALYSIS:

Section 1: Allows an officer to take a photograph of a vehicle operator if

- The operator is cited for a moving violation;
- The operator vehicle does not produce a valid drivers license upon the request of a law enforcement officer; and
- The law enforcement officer has a reasonable suspicion concerning the true identity of the operator of the motor vehicle.

Section 2: Limits the type and use of a photograph, and specifies the procedures for disposition:

- The photograph may be only of the operator of the motor vehicle from the neck up, and may only be taken at the location where the citation is issued or at the jail if an arrest is made.
- The agency or law enforcement officer must retain the photograph until the conclusion of the case and the photograph cannot be used for any reason other than to confirm the identity of the alleged offender. Upon the final decision by the court, the photograph must be destroyed by the law enforcement officer or agency.

Section 3: Adds a new section to the Identity Theft Protection Act. The section creates a statutory cause of action for a person whose personal information is published over their objection. A person that published the first initial or first name, and last name of another, in addition to one or more of the types of identifying information listed, would be in violation of the statute. The publisher must have actual knowledge that the person objected to the disclosure to be found in violation of the statute. The section provides for civil damages, injunctive relief, and attorneys' fees pursuant to the statute that provides for civil damages for criminal identity fraud violations. (See Section 4 of the bill)

Section 4: Makes conforming amendments to G.S. 1-539.2C. Damages may be in an amount of up to five thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party.

EFFECTIVE DATE: The bill would become effective December 1, 2007 and would apply to offenses or violations committed on or after that date.

Summary Contribution by Drupti Chauhan, Staff Attorney

H0454e2-SMRK-CSRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1284

Committee Substitute Favorable 4/26/07

Short Title: Breach/Construction Contract Accrual Date. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CAUSE OF ACTION FOR BREACH OF CONTRACT OR BREACH OF WARRANTY ARISING OUT OF THE PERFORMANCE OF A CONSTRUCTION PROJECT TO IMPROVE REAL PROPERTY IS DEEMED TO ACCRUE AT THE TIME OF THE OCCURRENCE OF THE BREACH OR UPON SUBSTANTIAL COMPLETION OF THE CONSTRUCTION, WHICHEVER OCCURS LATER.

The General Assembly of North Carolina enacts:

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

"(d) A cause of action for breach of contract or breach of warranty, whether express or implied, arising out of the performance of a construction project to improve real property shall be deemed to accrue at the time of the occurrence of the breach or upon substantial completion of the construction, whichever is later. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50."

SECTION 2. This act is effective when it becomes law, applies to actions filed on or after that date, and does not revive claims previously barred under G.S. 1-15.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1284
Committee Substitute Favorable 4/26/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1284-CSTC-42 [v.1]

6/22/2007 5:09:18 PM

Short Title: Breach/Construction Contract Accrual Date. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CAUSE OF ACTION FOR BREACH OF CONTRACT OR BREACH OF WARRANTY ARISING OUT OF THE PERFORMANCE OF A CONSTRUCTION PROJECT TO IMPROVE REAL PROPERTY IS DEEMED TO ACCRUE AT THE TIME OF THE OCCURRENCE OF THE BREACH OR UPON SUBSTANTIAL COMPLETION OF THE CONSTRUCTION, WHICHEVER OCCURS LATER.

The General Assembly of North Carolina enacts:

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

"(d) A cause of action for breach of contract or breach of warranty, whether express or implied, in favor of any party to a contractual relationship arising out of the performance of a construction project to improve real property shall be deemed to accrue at the time of the occurrence of the breach or upon substantial completion of the construction, whichever is later. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50. This subsection shall not apply to the accrual of any cause of action governed by G.S. 1-52(16)."

SECTION 2. This act is effective when it becomes law, applies to actions filed on or after that date, and does not revive claims previously barred under G.S. 1-15.

HOUSE BILL 1284:
Breach/Construction Contract Accrual Date

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 3, 2007
Introduced by:	Rep. Stam	**Summary by:**	Kara McCraw
Version:	PCS to Second Edition H1284-CSTC		Committee Counsel

SUMMARY: House Bill 1284 would specify that a cause of action for breach of contract or breach of warranty arising out of construction projects to improve real property accrues at the time of the occurrence of the breach, or upon substantial completion of the construction, whichever occurs later.

The PCS for House Bill 1284 adds language clarifying that the subsection applies to parties to a contractual relationship, and that the subsection does not apply to accrual of causes of action under G.S. 1-52(16).

CURRENT LAW: G.S. 1-15(a) provides that civil actions can only be commenced within periods prescribed in the Civil Procedure chapter after the cause of action has accrued, unless a statute specifically prescribes a different limitation. Case law has held that causes of action for both breach of contract and breach of warranty accrue on the date of the breach. Kaleel Builders, Inc. v. Ashby, 161 N.C.App. 34, 43-44, 587 S.E.2d 470, 477 (2003).

G.S. 1-52(1) creates a statute of limitations of three years for actions on a contract, obligation, or liability arising out of a contract, express or implied, except as otherwise provided in the sections preceding and in G.S. 1-53(1).

G.S. 1-53(1) provides for a two-year statute of limitations for actions against a local unit of government upon a contract, obligation, or liability arising out of a contract, express or implied.

G.S. 1-50(5) creates a statute of repose of six years for actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property, running from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement. "Substantial completion" is defined in G.S. 1-50(c)(5)(c) as the "degree of completion of a project, improvement or specified area or portion therefore (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it is intended. The date of substantial completion may be established by written agreement."

G.S. 1-52(16) provides that, unless otherwise provided by statute and in professional malpractice claims under G.S. 1-15(c), causes of action for personal injury or physical damage to property do not accrue until bodily harm to the claimant or physical damage to the property becomes apparent or ought reasonably to become apparent, whichever occurs first. No cause of action may accrue more than 10 years after the last act or omission of the defendant giving rise to the action.

BILL ANALYSIS: House Bill 1284 would add a new subsection to G.S. 1-15 (Statute runs from accrual of action) which would provide that a cause of action for a breach of contract or breach of warranty, whether express or implied, in favor of any party to a contractual relationship arising out of the performance of a construction project to improve real property accrues at the later of:

1) the time of the occurrence of the breach, or

2) upon substantial completion of the construction.

The subsection clarifies that the term "substantial completion" has the same meaning as in G.S. 1-50. The subsection would not apply to the accrual of a cause of action governed by G.S. 1-52(16).

EFFECTIVE DATE: This bill would become effective when it becomes law and would apply to actions filed on or after that date. It would not revive claims previously barred under G.S. 1-15.

BACKGROUND: In ABL Plumbing v. Bladen County Board of Education, 175 N.C. App. 164 (2005), the N.C. Court of Appeals held that a cause of action for breach of contracts accrues as soon as the injury becomes apparent to the claimant or should reasonably become apparent, and held that the statute of limitations barred an action against the Bladen Board of Education for breach of contract and breach of warranty filed more than two years after the contract was breached and the plaintiff was aware of the breach. Plaintiff suggested that a new rule applicable to actions on construction contracts be adopted, providing that a cause of action would not accrue until substantial completion of performance. Plaintiff based this argument on policy grounds, including that such a change would encourage completion of construction contracts, avoid abandonment and litigation, and encourage nonjudical resolution of controversies. The Court of Appeals stated that such arguments were better addressed to the legislature and declined to adopt the new rule.

H1284e2-SMTC-CSTC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Tuesday, July 10, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1358** Street Gang Prevention Act.

Draft Number:	PCS 85347
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	Finance
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1536** Limit Liability of LPG Dealer/Certain Others.

Draft Number:	PCS 50734
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

J-1 — 7/00

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Murath Sullivan	Charlotte Chamber
[illegible]	NCAPO
Pam Morris	NC Math Com
Jamal Cam	DJJDP
Lee Rubert	CJPC
Meeral Virginia	NCMC
Jeff Mixon	Curtis
R. Paul Williams	NCHBA
Joe Stewart	IFNC
Paula A. Wolf.	El Pueblo

VISITOR REGISTRATION SHEET

JI — 7/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Bill Scoggin	Rose Williams Fan Club
Rose Williams	DOJ
Randy	AOC
[illegible]	AOC
Mike [illegible]	NCRPA
Amber Lueken Barwick	NC Conference of DAs
Cliff Venable	Gas Office
Alice Garland	NCEL
Tina Harris	WCPSS
Harold Scott	Greensboro Police Department

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dwight Cratts	Greensboro Police Dept.
Ernest Cumberton	Greensboro Police Dept
Fred Bone	Bone & Assoc.
David Crawford	AIA
Jeff Wood	DOA - YA10
Kemp Johnson	NC Propane Gas Assoc.

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman ← Called meeting to order
Senator R. C. Soles, Vice Chairman

Tuesday, July 10, 2007
10:00 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

	BILL NO.	SHORT TITLE	SPONSOR
(2) Nesbitt presided	HB 454	Identity Theft. (Clodfelter explained new at section 2 - which he added to PCS)	Representative Folwell ↔ Rep. Folwell Representative Spear
(3)	HB 1284	Breach/Construction Contract Accrual Date	Representative Stam ↔
(1)	HB 1536	Limit Liability of LPG Dealer/Certain Others	Representative Gibson, II ↔ Sen. Albertson
	HB 1179	Limit Liability of LPG Dealer/Certain Others	Senator Albertson

Sen Tillman wondered if okay Folwell - changes okay

PCS - Clodfelter moved adoption - passed

PCS - Hoyle moved for adoption - passed
B. Gilkeson explained change in PCS -
Sen. Tillman moved fav. CS unfavorable as to original bill. Motion passed.

Adjournment.

(3) - speakers - Rod Malone - Atty - Tharrington-Smith spoke in opposition - Representing School Brd(?) - No reason to make a distinction.
Leslie Winner - UNC - concern has potential to
Rep. Stam - Purpose to have more diffinet time - encourage resolution of complaints.

SENATE JUDICIARY I COMMITTEE
(Civil)

July 12, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Thursday, July 12 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Vice Chairman R. C. Soles, Member Charlie Albertson, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Richard Stevens, and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:14 a.m. and called House Bill 1625, the enactment of the Eyewitness Identification Reform Act, as the first order of business. A Proposed Committee Substitute was passed to members. Sen. Soles moved for adoption of the PCS. The PCS was adopted by unanimous vote by the Committee.

Chairman Nesbitt recognized Rep. Glazier to explain the bill. Chairman Nesbitt calls for discussion among members. Sen. Kinnaird motions for favorable report, unfavorable to the original bill. Discussion began among members. Sen. Soles asked about the March 1, 2008 date of enactment. Rep. Glazier replied that the later date gives smaller law enforcement agencies the opportunity to go through training. The motion for a favorable report passed.

House Bill 1626 was the committee's second order of business, a bill providing that a custodial interrogation in a homicide case must be electronically recorded. Sen. Clodfelter moved to adopt a Proposed Committee Substitute that was passed to members. The PCS was adopted by the Committee. Rep. Glazier was again recognized by Chairman Nesbitt. Rep. Glazier then recognized Rep. Blue who explained that the bill had four consequences: to "truly" convict the guilty, to protect police officers, to improve accuracy and to improve law enforcement.

As discussion continued Chairman Nesbitt asked if all law enforcement can be trained by the July 1 enactment date. Sen. Soles asked to amend the bill to a March 1 enactment date. Chairman Nesbitt called on Eddie Caldwell of the North Carolina Sheriff's Association. Mr. Caldwell said he believed there would not be any issues with the date. The amendment passed.

Sen. Stevens moved to roll the amendment into a new committee substitute, give that PCS a favorable report, unfavorable to the original. The motion passed.

Chairman Nesbitt then called on Rep. England, M. D. for House Bill 1671, a bill providing for arbitration in personal injury or wrongful death cases based on alleged

professional negligence. A Proposed Committee Substitute was passed to members. Sen. Albertson moved for adopt the PCS, and the motion passed through unanimous vote. Rep. England told the committee that the bill was supported by both the North Carolina Academy of Trial Lawyers sand the North Carolina Medical Society. Chairman Nesbitt called on staff attorney Bill Gilkeson to explain the bill. Sen. Berger asked how the Senate version of the bill differed from the house version. Mr. Gilkeson said that differences were technical. After more discussion the bill was pulled for a later meeting. The meeting was adjourned at 10:52.

Respectfully submitted,

Senator Martin Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

professional negligence. A Proposed Committee Substitute was passed to members. Sen. Albertson moved for adopt the PCS, and the motion passed through unanimous vote. Rep. England told the committee that the bill was supported by both the North Carolina Academy of Trial Lawyers sand the North Carolina Medical Society. Chairman Nesbitt called on staff attorney Bill Gilkeson to explain the bill. Sen. Berger asked how the Senate version of the bill differed from the house version. Mr. Gilkeson said that differences were technical. After more discussion the bill was pulled for a later meeting. The meeting was adjourned at 10:52.

Copies of HB 1625, 2nd Edition, Proposed Committee Substitute for HB 1625, Bill Analysis for the PCS for HB 1625, 2nd Edition of HB 1626, Proposed Committee Substitute for HB 1626, Bill Analysis for the PCS to HB 1626, Amendment to HB 1626, 3rd Edition to HB 1671, Proposed Committee Substitute for HB 1671, and the Bill Analysis for the PCs to HB 1671 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, respectively..

Respectfully submitted,

_____

Senator Martin Nesbitt
Chairman

_____

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 1625
Committee Substitute Favorable 4/25/07

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EYEWITNESS IDENTIFICATION REFORM ACT.

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 14A.

"Eyewitness Identification Reform Act.

"**§ 15A-284.50. Short title.**

This Article shall be called the "Eyewitness Identification Reform Act".

"**§ 15A-284.51. Purpose.**

The purpose of this Article is to help solve crime, convict the guilty, and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects.

"**§ 15A-284.52. Eyewitness identification reform.**

(a) Definitions. – The following definitions apply in this Article:

(1) Eyewitness. – A person whose identification by sight of another person may be relevant in a criminal proceeding.

(2) Filler. – A person or a photograph of a person who is not suspected of an offense and is included in a lineup.

(3) Independent administrator. – A lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.

(4) Live lineup. – A procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(5) Lineup. – A photo lineup or live lineup.

(6) Lineup administrator. – The person who conducts a lineup.

(7) Photo lineup. – A procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(b) Eyewitness Identification Procedures. – Lineups conducted by State, county, and other local law enforcement officers shall meet all of the following requirements:

(1) An independent administrator shall conduct the lineup. In the event an independent administrator is not available, an alternative method may be used as provided by subsection (c) of this section.

(2) Individuals or photos shall be presented to witnesses sequentially, with each individual or photo presented to the witness separately, in a previously determined order, and removed after it is viewed before the next individual or photo is presented.

(3) Before a lineup, the eyewitness shall be instructed that the perpetrator might or might not be presented in the lineup, that the lineup administrator does not know the suspect's identity, that the eyewitness should not feel compelled to make an identification, that it is as important to exclude innocent persons as it is to identify the perpetrator, and that the investigation will continue whether or not an identification is made.

(4) In a photo lineup, the photograph of the suspect shall be contemporary and, to the extent practicable, shall resemble the suspect's appearance at the time of the offense.

(5) The lineup shall be composed so that the fillers generally resemble the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition:

a. All fillers selected shall resemble, as much as practicable, the eyewitness's description of the perpetrator in significant features including any unique or unusual features.

b. At least five fillers shall be included in a photo lineup, in addition to the suspect.

c. At least five fillers shall be included in a live lineup, in addition to the suspect.

d. If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates shall be different from the fillers used in any prior lineups.

(6) If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup or photo array for each eyewitness.

(7) In a lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspect shall be visible or made known to the eyewitness.

(8) In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.

(9) In a live lineup, all lineup participants must be out of view of the eyewitness prior to the lineup.

(10) Only one suspect shall be included in a lineup.

(11) Nothing shall be said to the eyewitness regarding the suspect's position in the lineup or regarding anything that might influence the eyewitness's identification.

(12) The lineup administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given lineup is the perpetrator. The lineup administrator shall separate all witnesses in order to discourage witnesses from conferring with one another before or during the procedure. Each witness shall be given instructions regarding the identification procedures without other witnesses present.

(13) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person before the lineup administrator obtains the eyewitness's confidence statement about the selection. There shall not be anyone present during the live lineup or photographic identification procedures who knows the suspect's identity, except the eyewitness and counsel as required by law.

(14) Unless it is not practical, a video record of live identification procedures shall be made. If a video record is not practical, the reasons shall be documented, and an audio record shall be made. If neither a video nor audio record are practical, the reasons shall be documented, and the lineup administrator shall make a written record of the lineup.

(15) Whether video, audio, or in writing, the record shall include all of the following information:

a. All identification and non-identification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the results and shall also sign the notation.

b. The names of all persons present at the lineup.

c. The date, time, and location of the lineup.

d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.

e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.

f. The sources of all photographs or persons used.

g. In a photo lineup, the photographs themselves.

h. In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.

(c) Alternative Methods for Identification if Independent Administrator Is Not Available. – In the event an independent administrator is not available, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the Education Training Committee of the North Carolina Criminal Justice Education and Training Standards Commission. Any alternative method shall be carefully structured to achieve neutral administration and to prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

(1) Automated computer programs that can automatically administer the photo lineup directly to an eyewitness and prevent the administrator from seeing which photo the witness is viewing until after the procedure is completed.

(2) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.

(3) Any other procedures that achieve neutral administration.

(d) Standardized Witness Instructions Required. – Every law enforcement agency shall adopt standardized witness instructions to be read and signed by the witness at the time of the identification procedure consistent with the instructions adopted by the Education Training Committee of the North Carolina Criminal Justice Education and Training Standards Commission.

(e) Remedies. – All of the following shall be available as consequences of compliance or noncompliance with the requirements of this section:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification.

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.

(3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

"§ 15A-284.53. Training of law enforcement officers.

The Department of Justice, in consultation with the Education Training Committee of the North Carolina Criminal Justice Education and Training Standards Commission, shall create educational materials and conduct training programs to instruct law enforcement officers and recruits how to conduct lineups in compliance with this Article."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1625

Committee Substitute Favorable 4/25/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1625-CSRK-55 [v.4]

7/12/2007 9:46:37 AM

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EYEWITNESS IDENTIFICATION REFORM ACT.

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 14A.

"Eyewitness Identification Reform Act.

"**§ 15A-284.50. Short title.**

This Article shall be called the "Eyewitness Identification Reform Act".

"**§ 15A-284.51. Purpose.**

The purpose of this Article is to help solve crime, convict the guilty, and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects.

"**§ 15A-284.52. Eyewitness identification reform.**

(a) Definitions. – The following definitions apply in this Article:

(1) Eyewitness. – A person whose identification by sight of another person may be relevant in a criminal proceeding.

(2) Filler. – A person or a photograph of a person who is not suspected of an offense and is included in a lineup.

(3) Independent administrator. – A lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.

(4) Live lineup. – A procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(5) Lineup. -- A photo lineup or live lineup.

(6) Lineup administrator. – The person who conducts a lineup.

(7) Photo lineup. – A procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(b) Eyewitness Identification Procedures. – Lineups conducted by State, county, and other local law enforcement officers shall meet all of the following requirements:

(1) A lineup shall be conducted by an independent administrator or by an alternative method as provided by subsection (c) of this section.

(2) Individuals or photos shall be presented to witnesses sequentially, with each individual or photo presented to the witness separately, in a previously determined order, and removed after it is viewed before the next individual or photo is presented.

(3) Before a lineup, the eyewitness shall be instructed:

a. that the perpetrator might or might not be presented in the lineup,

b. that the lineup administrator does not know the suspect's identity,

c. that the eyewitness should not feel compelled to make an identification,

d. that it is as important to exclude innocent persons as it is to identify the perpetrator, and

e. that the investigation will continue whether or not an identification is made.

The eyewitness shall acknowledge the receipt of the instructions in writing. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.

(4) In a photo lineup, the photograph of the suspect shall be contemporary and, to the extent practicable, shall resemble the suspect's appearance at the time of the offense.

(5) The lineup shall be composed so that the fillers generally resemble the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition:

a. All fillers selected shall resemble, as much as practicable, the eyewitness's description of the perpetrator in significant features including any unique or unusual features.

b. At least five fillers shall be included in a photo lineup, in addition to the suspect.

c. At least five fillers shall be included in a live lineup, in addition to the suspect.

d. If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates shall be different from the fillers used in any prior lineups.

(6) If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup or photo array for each eyewitness.

(7) In a lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspect shall be visible or made known to the eyewitness.

(8) In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.

(9) In a live lineup, all lineup participants must be out of view of the eyewitness prior to the lineup.

(10) Only one suspect shall be included in a lineup.

(11) Nothing shall be said to the eyewitness regarding the suspect's position in the lineup or regarding anything that might influence the eyewitness's identification.

(12) The lineup administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given lineup is the perpetrator. The lineup administrator shall separate all witnesses in order to discourage witnesses from conferring with one another before or during the procedure. Each witness shall be given instructions regarding the identification procedures without other witnesses present.

(13) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person before the lineup administrator obtains the eyewitness's confidence statement about the selection. There shall not be anyone present during the live lineup or photographic identification procedures who knows the suspect's identity, except the eyewitness and counsel as required by law.

(14) Unless it is not practical, a video record of live identification procedures shall be made. If a video record is not practical, the reasons shall be documented, and an audio record shall be made. If neither a video nor audio record are practical, the reasons shall be documented, and the lineup administrator shall make a written record of the lineup.

(15) Whether video, audio, or in writing, the record shall include all of the following information:

a. All identification and non-identification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the results and shall also sign the notation.

b. The names of all persons present at the lineup.

c. The date, time, and location of the lineup.

d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.

e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.

f. The sources of all photographs or persons used.

g. In a photo lineup, the photographs themselves.

h. In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.

(c) Alternative Methods for Identification if Independent Administrator Is Not Used. – In lieu of using an independent administrator, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the North Carolina Criminal Justice Education and Training Standards Commission. Any alternative method shall be carefully structured to achieve neutral administration and to prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

(1) Automated computer programs that can automatically administer the photo lineup directly to an eyewitness and prevent the administrator from seeing which photo the witness is viewing until after the procedure is completed.

(2) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.

(3) Any other procedures that achieve neutral administration.

(d) Remedies. – All of the following shall be available as consequences of compliance or noncompliance with the requirements of this section:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification.

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.

(3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

"§ 15A-284.53. Training of law enforcement officers.

Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education Training and Standards Commission, in consultation with the

Department of Justice, shall create educational materials and conduct training programs on how to conduct lineups in compliance with this Article."

SECTION 2. This act becomes effective March 1, 2008, and applies to offenses committed on or after that date.

HOUSE BILL 1625: Eyewitness ID Reform Act

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 11, 2007
Introduced by:	Reps. Glazier, Stam, Ross, Lucas	**Summary by:**	Hal Pell
Version:	PCS to Second Edition		Committee Co-Counsel

SUMMARY: House Bill 1625 enacts new requirements for eyewitness identification procedures. This act becomes effective March 1, 2008, and applies to offenses committed on or after that date.

BILL ANALYSIS: House Bill 1625 creates a new Article 14A in Chapter 15A entitled "Eyewitness Identification Reform Act".

The Act would require law enforcement to follow certain procedures when conducting a lineup for eyewitness identification. The procedures would include the following:

- Use of an independent administrator or an approved alternative procedure. An independent administrator is a lineup administrator who is not participating in the investigation of the offense and is unaware of which person is the suspect.
- Sequential presentation of photos or individuals. Sequential presentation means that each person or photo is presented separately, and one is removed before the next is presented.
- Instructions to the eyewitness prior to the lineup.
- Use of a current photo of the suspect, and representative of the suspect at the time of the offense, to the extent practical.
- The fillers must generally resemble the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out.
- No identifying writing or information visible to the eyewitness.
- Documentation of the eyewitness's identification and their confidence level in their identification.
- A video or audio record, and if neither is practical, a written record.

Alternative methods are authorized, and are designed to achieve neutral administration and prevent the administrator from knowing which photograph is being presented to the eyewitness.

Failure to comply with these requirements 1) shall be considered in any motion to suppress the identification, 2) shall be admissible in support of claims of eyewitness misidentification, and 3) when evidence of compliance or noncompliance with the requirements has been presented at trial, the jury shall be instructed that it may consider credible evidence to determine the reliability of eyewitness identifications.

The Act instructs the North Carolina Criminal Justice Education and Training Standards Commission, in consultation with the North Carolina Department of Justice, to create educational materials and conduct training programs on how to comply with these requirements.

EFFECTIVE DATE: This act becomes effective March 1, 2008, and applies to offenses committed on or after that date.

H1625e2-SMRK Summary Contribution by Susan Sitze, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 2

HOUSE BILL 1626
Committee Substitute Favorable 5/15/07

Short Title: Enhance Reliability of Interrogations. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CUSTODIAL INTERROGATION IN A HOMICIDE CASE MUST BE ELECTRONICALLY RECORDED IN ITS ENTIRETY.

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 8.

"Electronic Recording of Interrogations.

"**§ 15A-211. Electronic recording of interrogations.**

(a) Purpose. – The purpose of this Article is to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes about interrogations, thereby improving prosecution of the guilty while affording protection to the innocent and increasing court efficiency.

(b) Definitions. – The following definitions apply in this Article:

(1) Custodial interrogation. – An interview that occurs in a place of detention, during which a reasonable person in the subject's position would consider himself or herself in custody, and involves questioning by law enforcement personnel that is reasonably likely to elicit incriminating responses.

(2) Electronic recording. – An audio recording that is an authentic, accurate, unaltered record; or a visual recording that is an authentic, accurate, unaltered record.

(3) Place of detention. – A jail, police or sheriff's station, correctional or detention facility, holding facility for prisoners, or other place where persons are held in connection with criminal charges.

(4) In its entirety. – An uninterrupted record that begins with and includes a law enforcement officer's advice to the person in custody of that person's constitutional rights, ends when the interview has completely

finished, and clearly shows both the interrogator and the person in custody throughout. If the record is a visual recording, the camera recording the custodial interrogation must be placed so that the camera films both the interrogator and the suspect.

(c) Electronic Recording of Interrogations Required. – Any law enforcement officer conducting a custodial interrogation in a homicide investigation shall make an electronic recording of the interrogation in its entirety.

(d) Admissibility of Electronic Recordings. – During the prosecution of any homicide, an oral, written, nonverbal, or sign language statement of a defendant made in the course of a custodial interrogation may be presented as evidence against the defendant if an electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible. If the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded in its entirety, any statements made by the defendant after that custodial interrogation, even if otherwise in compliance with this section, may be questioned with regard to the voluntariness and reliability of the statement. The State may establish through clear and convincing evidence that the statement was both voluntary and reliable, and that law enforcement officers had good cause for failing to electronically record the interrogation in its entirety. Good cause shall include, but not be limited to, the following:

(1) The accused refused to have the interrogation electronically recorded, and the refusal itself was electronically recorded.

(2) The failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure, and obtaining replacement equipment was not feasible.

(e) Remedies for Compliance or Noncompliance. – All of the following remedies shall be granted as relief for compliance or noncompliance with the requirements of this section:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress a statement of the defendant made during or after a custodial interrogation.

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims that the defendant's statement was involuntary or is unreliable, provided the evidence is otherwise admissible.

(3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine whether the defendant's statement was voluntary and reliable.

(f) Article Does Not Preclude Admission of Certain Statements. – Nothing in this Article precludes the admission of any of the following:

(1) A statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing.
(2) A spontaneous statement that is not made in response to a question.
(3) A statement made during arrest processing in response to a routine question.
(4) A statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state.
(5) A statement obtained by a federal law enforcement officer in a federal place of detention.
(6) A statement given at a time when the interrogators are unaware that the person is suspected of a homicide.
(7) A statement used only for impeachment purposes and not as substantive evidence.

(g) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of a custodial interrogation of a defendant convicted of any offense related to the interrogation until one year after the completion of all State and federal appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic recording should be clearly identified and catalogued by law enforcement personnel."

SECTION 2. This act becomes effective July 1, 2008, and applies to interrogations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H D

HOUSE BILL 1626
Committee Substitute Favorable 5/15/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1626-PCS50740-RK-56

Short Title: Enhance Reliability of Interrogations. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CUSTODIAL INTERROGATION IN A HOMICIDE CASE MUST BE ELECTRONICALLY RECORDED IN ITS ENTIRETY.

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 8.

"Electronic Recording of Interrogations.

"**§ 15A-211. Electronic recording of interrogations.**

(a) Purpose. – The purpose of this Article is to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes about interrogations, thereby improving prosecution of the guilty while affording protection to the innocent and increasing court efficiency.

(b) Application. – The provisions of this Article shall only apply to custodial interrogations in homicide investigations conducted at any place of detention.

(c) Definitions. – The following definitions apply in this Article:

(1) Electronic recording. – An audio recording that is an authentic, accurate, unaltered record; or a visual recording that is an authentic, accurate, unaltered record.

(2) Place of detention. – A jail, police or sheriff's station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in custody in connection with criminal charges.

(3) In its entirety. – An uninterrupted record that begins with and includes a law enforcement officer's advice to the person in custody of that person's constitutional rights, ends when the interview has completely finished, and clearly shows both the interrogator and the person in

custody throughout. If the record is a visual recording, the camera recording the custodial interrogation must be placed so that the camera films both the interrogator and the suspect. Brief periods of recess, upon request by the person in custody or the law enforcement officer, do not constitute an "interruption" of the record. The record will reflect the starting time of the recess and the resumption of the interrogation.

(d) Electronic Recording of Interrogations Required. – Any law enforcement officer conducting a custodial interrogation in a homicide investigation shall make an electronic recording of the interrogation in its entirety.

(e) Admissibility of Electronic Recordings. – During the prosecution of any homicide, an oral, written, nonverbal, or sign language statement of a defendant made in the course of a custodial interrogation may be presented as evidence against the defendant if an electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible. If the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded in its entirety, any statements made by the defendant after that non-electronically recorded custodial interrogation, even if made during an interrogation that is otherwise in compliance with this section, may be questioned with regard to the voluntariness and reliability of the statement. The State may establish through clear and convincing evidence that the statement was both voluntary and reliable and that law enforcement officers had good cause for failing to electronically record the interrogation in its entirety. Good cause shall include, but not be limited to, the following:

(1) The accused refused to have the interrogation electronically recorded, and the refusal itself was electronically recorded.

(2) The failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure, and obtaining replacement equipment was not feasible.

(f) Remedies for Compliance or Noncompliance. – All of the following remedies shall be granted as relief for compliance or noncompliance with the requirements of this section:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress a statement of the defendant made during or after a custodial interrogation.

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims that the defendant's statement was involuntary or is unreliable, provided the evidence is otherwise admissible.

(3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine whether the defendant's statement was voluntary and reliable.

(g) Article Does Not Preclude Admission of Certain Statements. – Nothing in this Article precludes the admission of any of the following:

(1) A statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing.

(2) A spontaneous statement that is not made in response to a question.

(3) A statement made during arrest processing in response to a routine question.

(4) A statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state.

(5) A statement obtained by a federal law enforcement officer.

(6) A statement given at a time when the interrogators are unaware that the person is suspected of a homicide.

(7) A statement used only for impeachment purposes and not as substantive evidence.

(h) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of a custodial interrogation of a defendant convicted of any offense related to the interrogation until one year after the completion of all State and federal appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic recording should be clearly identified and catalogued by law enforcement personnel."

SECTION 2. This act becomes effective March 1, 2008, and applies to interrogations occurring on or after that date.

HOUSE BILL 1626:
Enhance Reliability of Interrogations

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 11, 2007
Introduced by:	Reps. Glazier, Ross, Blue	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	PCS to Second Edition H1626-CSRK		

SUMMARY: ***House Bill 1626 provides for custodial interrogations in homicide cases to be electronically recorded in their entirety. This act becomes effective July 1, 2008, and applies to interrogations conducted on or after that date.***

BILL ANALYSIS: House Bill 1626 creates a new Article 8 in Chapter 15A entitled "Electronic Recording of Interrogations".

The Act

- Requires law enforcement officers conducting a custodial interrogation in a homicide investigation to electronically record the interrogation in its entirety.
- Provides for any oral, written, nonverbal, or sign language statement of a defendant to be admitted in a homicide trial, if the interrogation was electronically recorded in its entirety as provided in this Act.
- Provides that if the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded in its entirety, any statements made by the defendant after that interrogation may be questioned with regard to the voluntariness and reliability of the statement.
- Requires the State to establish through clear and convincing evidence that the statement was voluntary and reliable and that there was good cause for failing to record the interrogation in its entirety. Good cause may include the defendant refusing to have the interrogation recorded or unforeseeable equipment failure.

Failure to comply with the requirements

(1) Shall be considered by the court in adjudicating motions to suppress a statement made during or after a custodial interrogation,

(2) Shall be admissible in support of claims that the defendant's statement was involuntary or is unreliable and

(3) Shall require to the court to instruct the jury that it may consider credible evidence of compliance or noncompliance to determine whether the defendant's statement was voluntary and reliable.

Electronic recordings of a custodial interrogation for a defendant who is convicted of an offense related to the interrogation shall not be destroyed or altered until one year after all appeals are exhausted. Every electronic recording should be clearly identified and catalogued by law enforcement personnel.

The Act specifically provides that certain types of statements are not precluded by the electronic recording provisions.

EFFECTIVE DATE: This act becomes effective July 1, 2008, and applies to interrogations occurring on or after that date.

H1626e2-SMRK-CSRK Summary contribution by Susan Sitze, Staff Attorney

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 7

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1626 DATE 7/12/07

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

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) SOLES

1 moves to amend the bill on page 3, line 22
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "July"
4
5 and substituting the word
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7 "March".
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1671

Committee Substitute Favorable 5/15/07
Committee Substitute #2 Favorable 5/17/07

Short Title: Arbitration/Negligent Health Care Actions. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION FOR CAUSES OF ACTION FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED PROFESSIONAL NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES TO AN ACTION.

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 1H.

"Voluntary Arbitration for Actions for Negligent Health Care Claims.

"**§ 90-21.60. Voluntary arbitration; prior agreements to arbitration void.**

(a) This Article applies to any cause of action for damages for personal injury or wrongful death based on alleged professional negligence in the provision of health care where all parties to the action have agreed to submit the dispute to arbitration under this Article in accordance with the requirements of G.S. 90-21.61.

(b) Any contract or other agreement entered into prior to the commencement of an action that purports to require a party to elect arbitration under this Article is void and unenforceable. This Article does not impair the enforceability of any arbitration provision that does not specifically require arbitration under this Article.

"**§ 90-21.61. Requirements for submitting to arbitration.**

(a) The parties may elect at any time during the pendency of the action to file a stipulation with the court in which all parties to the action agree to submit the dispute to arbitration under this Article.

(b) Declaration to Not Arbitrate. – In the event that the parties do not unanimously agree to submit a dispute to arbitration under subsection (a) of this section, the parties shall file a declaration with the court prior to the discovery scheduling conference required by G.S. 1A-1, Rule 26(f1).

The declaration shall state that the attorney representing the party has presented the party with a copy of the provisions of this Article, that the attorneys representing the parties have discussed the provisions of this Article with the parties, and that there is not unanimous agreement to submit the dispute to arbitration under this Article. The declaration is without prejudice to the parties' subsequent agreement to submit the dispute to arbitration.

"§ 90-21.62. Selection of arbitrator.

(a) Selection by Agreement. – An arbitrator shall be selected by agreement of the parties no later than 45 days after the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The parties may agree to select more than one arbitrator to conduct the arbitration. The parties may agree in writing to the selection of a particular arbitrator or particular arbitrators as a precondition for a stipulation to arbitrate.

(b) Selection From Panel. – If the parties are unable to agree to an arbitrator by the time specified in subsection (a) of this section, the arbitrator shall be selected from a panel of special or retired superior court judges who agree to be on a list maintained by the Administrative Office of the Courts. Each party shall alternately strike one member of the panel, and the last remaining name on the list shall be the arbitrator.

"§ 90-21.63. Witnesses; discovery; depositions; subpoenas.

(a) The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding subject to the requirements of this section and G.S. 90-21.64. Except as provided in subsection (b) of this section, each side shall be entitled to two experts on the issue of liability, two experts on the issue of damages, and one rebuttal expert.

(b) Where there are multiple parties on one side, the arbitrator shall determine the number of experts that are allowed based on the minimum number of experts necessary to ensure a fair and economic resolution of the action.

(c) Notwithstanding G.S. 90-21.64(a)(1), unless the arbitrator determines that exceptional circumstances require additional discovery, each party shall be entitled to all of the following discovery from any other party:

(1) Twenty-five interrogatories, including subparts.

(2) Ten requests for admission.

(3) Whatever is allowed under applicable court rules for:

a. Requests for production of documents and things and for entry upon land for inspection and other purposes; and

b. Requests for physical and mental examinations of persons.

(d) Each party shall be entitled to all of the following depositions:

(1) Depositions of any party and any expert that a party expects to call as a witness. – Except by order of the arbitrator for good cause shown, the length of the deposition of a party or an expert witness under this subdivision shall be limited to four hours.

(2) Depositions of other witnesses. – Unless the arbitrator determines that exceptional circumstances require additional depositions, the total number of depositions of persons under this subdivision shall be

limited to five depositions per side, each of which shall last no longer than two hours and for which each side shall be entitled to examine for one hour.

(e) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon the motion to the court by a party to the arbitration proceeding or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

"**§ 90-21.64. Time limitations for arbitration.**

(a) The time frames provided in this section shall run from the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under the Article. Any arbitration under this Article shall be conducted according to the time frames as follows:

(1) Within 45 days, the claimant shall provide a copy to the defendants of all relevant medical records. Alternatively, the claimant may provide to the defendants a release, in compliance with the federal Health Insurance Portability and Accountability Act, for all relevant medical records, along with the names and addresses of all health care providers who may have possession, custody, or control of the relevant medical records. The provisions of this subdivision shall not limit discovery conducted pursuant to G.S. 90-21.63(c).

(2) Within 120 days, the claimant shall disclose to each defendant the name and curriculum vitae or other documentation of qualifications of any expert the claimant expects to call as a witness.

(3) Within 140 days, each defendant shall disclose to the claimant the name and curriculum vitae or other documentation of qualifications of any expert the defendant expects to call as a witness.

(4) Within 160 days, each party shall disclose to each other party the name and curriculum vitae or other documentation of qualifications of any rebuttal expert the party expects to call as a witness.

(5) Within 240 days, all discovery shall be completed.

(6) Within 270 days, the arbitration hearing shall commence.

(b) The arbitrator shall issue a case scheduling order in every proceeding specifying the dates by which the requirements of subdivisions (2) through (6) of subsection (a) of this section shall be completed.

(c) It is the express public policy of the General Assembly that arbitration hearings under this Article be commenced no later than 10 months after the parties file the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The arbitrator may grant a continuance of the commencement of the arbitration hearing only where a party shows that exceptional circumstances create an undue and unavoidable hardship on the party or where all parties consent to the continuance.

"**§ 90-21.65. Written decision by arbitration.**

(a) The arbitrator shall issue a decision in writing and signed by the arbitrator within 14 days after the completion of the arbitration hearing and shall promptly deliver a copy of the decision to each party or the party's attorneys.

(b) The arbitrator shall not make an award of damages that exceeds a total of one million dollars ($1,000,000) for any dispute submitted to arbitration under this Article, regardless of the number of claimants or defendants that are parties to the dispute.

(c) If the arbitrator makes an award of damages to the claimant, the arbitrator shall make a finding as to whether the injury or death to the plaintiff was caused by the negligence of the defendant.

(d) The fees and expenses of the arbitrator shall be paid by the nonprevailing parties.

"**§ 90-21.66. Judgment by court.**

After a party to the arbitration proceeding receives notice of a decision, the party may file a motion with the court for a judgment in accordance with the decision at which time the court shall issue such a judgment unless the decision is modified, corrected, or vacated as provided in G.S. 90-21.68.

"**§ 90-21.67. Retention of jurisdiction by court.**

The court shall retain jurisdiction over the action during the pendency of the arbitration proceeding. The court may, at the request of the arbitrator, enter orders necessary to enforce the provisions of this Article.

"**§ 90-21.68. Appeal of arbitrator's decision.**

There is no right to a trial de novo on an appeal of the arbitrator's decision under this Article. An appeal of the arbitrator's decision is limited to the bases for appeal provided under G.S. 1-569.23 or G.S. 1-569.24.

"**§ 90-21.69. Revised Uniform Arbitration Act not applicable.**

The provisions of Article 45C of Chapter 1 of the General Statutes do not apply to arbitrations conducted under this Article except to the extent specifically provided in this Article."

SECTION 2. G.S. 1-569.3 is amended by adding a new subsection to read:

"(c) This Article does not govern arbitrations under Article 1H of Chapter 90 of the General Statutes."

SECTION 3. This act becomes effective January 1, 2008, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1671

Committee Substitute Favorable 5/15/07

Committee Substitute #2 Favorable 5/17/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1671-CSRR-39 [v.3]

7/11/2007 6:32:23 PM

Short Title: Arbitration/Negligent Health Care Actions. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION FOR CAUSES OF ACTION FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED PROFESSIONAL NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES TO AN ACTION.

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 1H.

"Voluntary Arbitration for Actions for Negligent Health Care Claims.

"**§ 90-21.60. Voluntary arbitration; prior agreements to arbitration void.**

(a) This Article applies to any cause of action for damages for personal injury or wrongful death based on alleged professional negligence in the provision of health care where all parties to the action have agreed to submit the dispute to arbitration under this Article in accordance with the requirements of G.S. 90-21.61.

(b) Any contract or other agreement entered into prior to the commencement of an action that purports to require a party to elect arbitration under this Article is void and unenforceable. This Article does not impair the enforceability of any arbitration provision that does not specifically require arbitration under this Article.

"**§ 90-21.61. Requirements for submitting to arbitration.**

(a) The parties may elect at any time during the pendency of the action to file a stipulation with the court in which all parties to the action agree to submit the dispute to arbitration under this Article.

(b) Declaration Not to Arbitrate. – In the event that the parties do not unanimously agree to submit a dispute to arbitration under subsection (a) of this section,

the parties shall file a declaration with the court prior to the discovery scheduling conference required by G.S. 1A-1, Rule 26(f1).

The declaration shall state that the attorney representing the party has presented the party with a copy of the provisions of this Article, that the attorneys representing the parties have discussed the provisions of this Article with the parties and with each other, and that the parties do not unanimously agree to submit the dispute to arbitration under this Article. The declaration is without prejudice to the parties' subsequent agreement to submit the dispute to arbitration.

"**§ 90-21.62. Selection of arbitrator.**

(a) Selection by Agreement. – An arbitrator shall be selected by agreement of all the parties no later than 45 days after the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The parties may agree to select more than one arbitrator to conduct the arbitration. The parties may agree in writing to the selection of a particular arbitrator or particular arbitrators as a precondition for a stipulation to arbitrate.

(b) Selection From Panel. – If all the parties are unable to agree to an arbitrator by the time specified in subsection (a) of this section, the arbitrator shall be selected from a panel of special or emergency superior court judges who agree to be on a list maintained by the Administrative Office of the Courts. Each party shall alternately strike one member of the panel, and the last remaining name on the list shall be the arbitrator.

"**§ 90-21.63. Witnesses; discovery; depositions; subpoenas.**

(a) The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding subject to the requirements of this section and G.S. 90-21.64. Except as provided in subsection (b) of this section, each side shall be entitled to two experts on the issue of liability, two experts on the issue of damages, and one rebuttal expert.

(b) Where there are multiple parties on one side, the arbitrator shall determine the number of experts that are allowed based on the minimum number of experts necessary to ensure a fair and economic resolution of the action.

(c) Notwithstanding G.S. 90-21.64(a)(1), unless the arbitrator determines that exceptional circumstances require additional discovery, each party shall be entitled to all of the following discovery from any other party:

(1) Twenty-five interrogatories, including subparts.

(2) Ten requests for admission.

(3) Whatever is allowed under applicable court rules for:

a. Requests for production of documents and things and for entry upon land for inspection and other purposes; and

b. Requests for physical and mental examinations of persons.

(d) Each party shall be entitled to all of the following depositions:

(1) Depositions of any party and any expert that a party expects to call as a witness. – Except by order of the arbitrator for good cause shown, the length of the deposition of a party or an expert witness under this subdivision shall be limited to four hours.

(2) Depositions of other witnesses. – Unless the arbitrator determines that exceptional circumstances require additional depositions, the total number of depositions of persons under this subdivision shall be limited to five depositions per side, each of which shall last no longer than two hours and for which each side shall be entitled to examine for one hour.

(e) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon the motion to the court by a party to the arbitration proceeding or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

"**§ 90-21.64. Time limitations for arbitration.**

(a) The time frames provided in this section shall run from the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under the Article. Any arbitration under this Article shall be conducted according to the time frames as follows:

(1) Within 45 days, the claimant shall provide a copy to the defendants of all relevant medical records. Alternatively, the claimant may provide to the defendants a release, in compliance with the federal Health Insurance Portability and Accountability Act, for all relevant medical records, along with the names and addresses of all health care providers who may have possession, custody, or control of the relevant medical records. Th e provisions of this subdivision shall not limit discovery conducted pursuant to G.S. 90-21.63(c).

(2) Within 120 days, the claimant shall disclose to each defendant the name and curriculum vitae or other documentation of qualifications of any expert the claimant expects to call as a witness.

(3) Within 140 days, each defendant shall disclose to the claimant the name and curriculum vitae or other documentation of qualifications of any expert the defendant expects to call as a witness.

(4) Within 160 days, each party shall disclose to each other party the name and curriculum vitae or other documentation of qualifications of any rebuttal expert the party expects to call as a witness.

(5) Within 240 days, all discovery shall be completed.

(6) Within 270 days, the arbitration hearing shall commence.

(b) The arbitrator shall issue a case scheduling order in every proceeding specifying the dates by which the requirements of subdivisions (2) through (6) of subsection (a) of this section shall be completed. The scheduling order also shall specify a deadline for the service of dispositive motions and briefs.

(c) It is the express public policy of the General Assembly that arbitration hearings under this Article be commenced no later than 10 months after the parties file the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The arbitrator may grant a continuance of the commencement of the arbitration

hearing only where a party shows that exceptional circumstances create an undue and unavoidable hardship on the party or where all parties consent to the continuance.

"**§ 90-21.65. Written decision by arbitration.**

(a) The arbitrator shall issue a decision in writing and signed by the arbitrator within 14 days after the completion of the arbitration hearing and shall promptly deliver a copy of the decision to each party or the party's attorneys.

(b) The arbitrator shall not make an award of damages that exceeds a total of one million dollars ($1,000,000) for any dispute submitted to arbitration under this Article, regardless of the number of claimants or defendants that are parties to the dispute.

(c) If the arbitrator makes an award of damages to the claimant, the arbitrator shall make a finding as to whether the injury or death was caused by the negligence of the defendant.

(d) The fees and expenses of the arbitrator shall be paid equally by the parties.

"**§ 90-21.66. Judgment by court.**

After a party to the arbitration proceeding receives notice of a decision, the party may file a motion with the court for a judgment in accordance with the decision at which time the court shall issue such a judgment unless the decision is modified, corrected, or vacated as provided in G.S. 90-21.68.

"**§ 90-21.67. Retention of jurisdiction by court.**

The court shall retain jurisdiction over the action during the pendency of the arbitration proceeding. The court may, at the request of the arbitrator, enter orders necessary to enforce the provisions of this Article.

"**§ 90-21.68. Appeal of arbitrator's decision.**

There is no right to a trial de novo on an appeal of the arbitrator's decision under this Article. An appeal of the arbitrator's decision is limited to the bases for appeal provided under G.S. 1-569.23 or G.S. 1-569.24.

"**§ 90-21.69. Revised Uniform Arbitration Act not applicable.**

The provisions of Article 45C of Chapter 1 of the General Statutes do not apply to arbitrations conducted under this Article except to the extent specifically provided in this Article."

SECTION 2. G.S. 1-569.3 is amended by adding a new subsection to read:

"(c) This Article does not govern arbitrations under Article 1H of Chapter 90 of the General Statutes."

SECTION 3. This act becomes effective January 1, 2008, and applies to actions filed on or after that date.

HOUSE BILL 1671: Arbitration/Negligent Health Care Actions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 12, 2007
Introduced by:	Reps. England, Glazier, Rapp, Allen	**Summary by:**	William R. Gilkeson Committee Co-Counsel
Version:	PCS to Third Edition H1671-CSRR-39		

SUMMARY: ***This Proposed Committee Substitute for House Bill 1671 creates a new Article 1H in Chapter 90, Voluntary Arbitration for Actions for Negligent Health Care Claims, to provide for the voluntary arbitration of personal injury or wrongful death actions based on negligence in the provision of health care.***

BILL ANALYSIS: The PCS applies to any cause of action for personal injury or wrongful death damages based on alleged professional negligence in the provision of health care.

Arbitration requirements. The parties may elect at any time during the pendency of the action to file a stipulation with the court agreeing to submit to arbitration under this Article and must file a declaration with the court prior to the discovery scheduling conference if an agreement is not reached.

Selection of arbitrator. An arbitrator is selected by agreement of all the parties within 45 days of the stipulation. If an agreement is not reached, the arbitrator is selected for a panel of special or retired superior court judges on a list maintained by the Administrative Office of the Courts. The parties each strike names from the list until one last name remains.

Witnesses and discovery. Each side is entitled to two experts on liability, two experts on damages, and one rebuttal expert and is entitled to the following discovery:

- 25 interrogatories.
- 10 requests for admission.
- Whatever is allowable under court rules for requests for production of documents and for mental and physical examinations.
- Depositions of any party and any expert that the party expects to call as a witness, and 5 depositions per side for other witnesses, unless exceptional circumstances require otherwise.

An arbitrator may issue a subpoena for the attendance of a witness and the production of records.

Time Limits. Within 45 days of stipulation to arbitration, the parties must submit a copy of all relevant medical records or a release for medical records. Within 120 days, the claimant shall disclose to each defendant the name and curriculum vitae of expert witnesses (140 days for the defendant). Within 160 days, each party shall disclose the name and curriculum vitae of rebuttal experts. Within 240 days, all discovery shall be completed and within 270 days the arbitration hearing shall begin.

Written decision. Within 14 days after completion of the hearing, the arbitrator shall issue and sign a decision in writing. **An award under this article may not exceed $1,000,000 dollars.**

Judgment by court. After receiving notice of a hearing, the party may file a motion with the court for a judgment at which time the court shall issue a judgment unless the decision is modified, corrected, or vacated.

Appeal. There is no right to a trial de novo on appeal. Appeals are limited to bases found in G.S. 1-569.23 and G.S. 1-569.24 including cases of fraud, refusal to postpone a hearing upon sufficient cause, or mathematical miscalculation. *(See copies of those statutes on page 2 of this summary.)*

EFFECTIVE DATE: The PCS would become effective January 1, 2008, and apply to actions filed on or after that date.

Tim Hovis, Co-Counsel to House Judiciary I, contributed substantially to this summary.

§ 1-569.23. Vacating award.

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

a. Evident partiality by an arbitrator appointed as a neutral arbitrator;

b. Corruption by an arbitrator; or

c. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon a showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to G.S. 1-569.15 so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in G.S. 1-569.9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section shall be filed within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, unless the moving party alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known, or by the exercise of reasonable care would have been known, by the moving party.

(c) If the court vacates an award on a ground other than that set forth in subdivision (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4), or (6) of subsection (a) of this section, the rehearing may be held before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as the time provided in G.S. 1-569.19(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award pursuant to G.S. 1-569.24 is pending. (1927, c. 94, s. 16; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.24. Modification or correction of award.

(a) Upon motion made within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award. (1927, c. 94, s. 17; 1973, c. 676, s. 1; 2003-345, s. 2.)

SENATE JUDICIARY I COMMITTEE
(Civil)

July 12, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary I Committee (Civil) met Thursday, July 12 in Room 1027 of the Legislative Building. Senators present were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Vice Chairman R. C. Soles, Member Charlie Albertson, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Richard Stevens, and Sen. Jerry Tillman.

Chairman Nesbitt called the meeting to order at 10:14 a.m. and called House Bill 1625, the enactment of the Eyewitness Identification Reform Act, as the first order of business. A Proposed Committee Substitute was passed to members. Sen. Soles moved for adoption of the CPS. The CPS was adopted by unanimous vote by the Committee.

Chairman Nesbitt recognized Rep. Glazier to explain the bill. Chairman Nesbitt calls for discussion among members. Sen. Kinnaird motions for favorable report. ~~Discussed~~ began discussion among members. Sen. Soles asked about the March 1, 2008 date of enactment. Rep. Glazier replied that the later date gives smaller law enforcement agencies the opportunity to go through training. The motion for favorable report passed.

House Bill 1626 was the committee's second order of business, a bill providing that a custodial interrogation in a homicide case must be electronically recorded. Sen. Clodfelter moved to adopt a Proposed Committee Substitute that was passed to members. The PCS was adopted by the Committee. Rep. Glazier was again recognized by Chairman Nesbitt. Rep. Glazier then recognized Rep. Blue who explained that the bill had four consequences: to "truly" convict the guilty, to protect police officers, to improve accuracy, and to improve law enforcement.

As discussion continued Chairman Nesbitt asked if all law enforcement can be trained by the July 1 enactment date. Sen. Soles asked to amend the bill to a March 1 enactment date. Chairman Nesbitt called ~~in the audience~~ on Eddie Caldwell of the North Carolina Sheriff's Association. Mr. Caldwell said he believe there would be any issues with the date. The amendment passed.

Sen. Stevens moved to roll the amendment into a CPS. The motion passed.

Chairman Nesbitt then called on Rep. England, M. D. for House Bill 1671, a bill providing for arbitration in personal injury or wrongful death cases based on alleged professional negligence. A Proposed Committee Substitute was passed to members. Sen. Albertson moved for adopt the PCS, and the PCS was adopted through unanimous vote.

Rep. England told the committee that the bill was supported by both the North Carolina Trial Lawyers and the North Carolina Medical Society. Chairman Nesbitt called on staff attorney Bill Gilkeson to explain the bill. Sen. Berger asked how the Senate version of the bill differed from the house version. Mr. Gilkeson said that differences were technical. After more discussion the bill was pulled for a later meeting. The meeting was adjourned at 10:52.

Increase Tort Claims - Paul Pulley

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Thursday, July 12, 2007
10:00 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
(1) HB 1625	Eyewitness ID Reform Act.	Representative Ross Representative Lucas (HAL PELL Representative Stam Representative Glazier ← Explained
(2) HB 1626	Enhance Reliability of Interrogations.	Representative Blue Representative Ross Representative Glazier ← → Explained
HB 1671 (3)	Arbitration/Negligent Health Care Actions.	Representative England, M.D. — Explained Representative Allen Representative Rapp (Bill Gilkey Representative Glazier Dick Taylor-spoke

(1) Sen. Soles PCS Adoption - passed (V.4)
Kinnaird moved favorable

(2) PCS Clodfelter Adoption - passed

Soles moved to amend - passed
Sen. Stevens moved fav. - passed.

(3) PCS Albertson moved-adopted
Clodfelter - Had questions -
- Bill carried over -

Chris Mumma Innocence Commission
Mumma (HB 1625 & HB 1626)

Adjournment.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1625

Committee Substitute Favorable 4/25/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1625-CSRK-55 [v.4]

7/12/2007 9:46:37 AM

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EYEWITNESS IDENTIFICATION REFORM ACT.

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 14A.

"Eyewitness Identification Reform Act.

"**§ 15A-284.50. Short title.**

This Article shall be called the "Eyewitness Identification Reform Act".

"**§ 15A-284.51. Purpose.**

The purpose of this Article is to help solve crime, convict the guilty, and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects.

"**§ 15A-284.52. Eyewitness identification reform.**

(a) Definitions. – The following definitions apply in this Article:

(1) Eyewitness. – A person whose identification by sight of another person may be relevant in a criminal proceeding.

(2) Filler. – A person or a photograph of a person who is not suspected of an offense and is included in a lineup.

(3) Independent administrator. – A lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.

(4) Live lineup. – A procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(5) Lineup. – A photo lineup or live lineup.

(6) Lineup administrator. – The person who conducts a lineup.

(7) Photo lineup. – A procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(b) Eyewitness Identification Procedures. – Lineups conducted by State, county, and other local law enforcement officers shall meet all of the following requirements:

(1) A lineup shall be conducted by an independent administrator or by an alternative method as provided by subsection (c) of this section.

(2) Individuals or photos shall be presented to witnesses sequentially, with each individual or photo presented to the witness separately, in a previously determined order, and removed after it is viewed before the next individual or photo is presented.

(3) Before a lineup, the eyewitness shall be instructed:

a. that the perpetrator might or might not be presented in the lineup,

b. that the lineup administrator does not know the suspect's identity,

c. that the eyewitness should not feel compelled to make an identification,

d. that it is as important to exclude innocent persons as it is to identify the perpetrator, and

e. that the investigation will continue whether or not an identification is made.

The eyewitness shall acknowledge the receipt of the instructions in writing. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.

(4) In a photo lineup, the photograph of the suspect shall be contemporary and, to the extent practicable, shall resemble the suspect's appearance at the time of the offense.

(5) The lineup shall be composed so that the fillers generally resemble the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition:

a. All fillers selected shall resemble, as much as practicable, the eyewitness's description of the perpetrator in significant features including any unique or unusual features.

b. At least five fillers shall be included in a photo lineup, in addition to the suspect.

c. At least five fillers shall be included in a live lineup, in addition to the suspect.

d. If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates shall be different from the fillers used in any prior lineups.

(6) If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup or photo array for each eyewitness.

(7) In a lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspect shall be visible or made known to the eyewitness.

(8) In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.

(9) In a live lineup, all lineup participants must be out of view of the eyewitness prior to the lineup.

(10) Only one suspect shall be included in a lineup.

(11) Nothing shall be said to the eyewitness regarding the suspect's position in the lineup or regarding anything that might influence the eyewitness's identification.

(12) The lineup administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given lineup is the perpetrator. The lineup administrator shall separate all witnesses in order to discourage witnesses from conferring with one another before or during the procedure. Each witness shall be given instructions regarding the identification procedures without other witnesses present.

(13) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person before the lineup administrator obtains the eyewitness's confidence statement about the selection. There shall not be anyone present during the live lineup or photographic identification procedures who knows the suspect's identity, except the eyewitness and counsel as required by law.

(14) Unless it is not practical, a video record of live identification procedures shall be made. If a video record is not practical, the reasons shall be documented, and an audio record shall be made. If neither a video nor audio record are practical, the reasons shall be documented, and the lineup administrator shall make a written record of the lineup.

(15) Whether video, audio, or in writing, the record shall include all of the following information:

a. All identification and non-identification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the results and shall also sign the notation.

b. The names of all persons present at the lineup.

c. The date, time, and location of the lineup.

d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.
e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.
f. The sources of all photographs or persons used.
g. In a photo lineup, the photographs themselves.
h. In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.

(c) Alternative Methods for Identification if Independent Administrator Is Not Used. – In lieu of using an independent administrator, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the North Carolina Criminal Justice Education and Training Standards Commission. Any alternative method shall be carefully structured to achieve neutral administration and to prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

(1) Automated computer programs that can automatically administer the photo lineup directly to an eyewitness and prevent the administrator from seeing which photo the witness is viewing until after the procedure is completed.
(2) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.
(3) Any other procedures that achieve neutral administration.

(d) Remedies. – All of the following shall be available as consequences of compliance or noncompliance with the requirements of this section:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification.
(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.
(3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

"§ 15A-284.53. Training of law enforcement officers.

Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education Training and Standards Commission, in consultation with the

Department of Justice, shall create educational materials and conduct training programs on how to conduct lineups in compliance with this Article."

SECTION 2. This act becomes effective March 1, 2008, and applies to offenses committed on or after that date.

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Thursday, July 12, 2007
10:00 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 1625	Eyewitness ID Reform Act.	Representative Ross Representative Lucas Representative Stam Representative Glazier
HB 1626	Enhance Reliability of Interrogations.	Representative Blue Representative Ross Representative Glazier
HB 1671	Arbitration/Negligent Health Care Actions.	Representative England, M.D. Representative Allen Representative Rapp Representative Glazier

Adjournment.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 12, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd Barlow	NCATL
John Bowdish	Astra Zeneca
Anonymous Anon	none
Sarah Preston	ACLU-NC
Christine Kuenzel	106 - Daily Bulletin
Paige O'Hale	Gov's Office
Amy McConkey	Smith Anderson
Steve Keene	NCMS
Jamal Jones	NCHA
Chip Baggett	NCMS
Cody Wright	"
Dave Hamm	SA.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 12, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pulley	NCATL
Eddie Caldwell	NC Sheriffs Assn.
[illegible]	NCAOC
Leanne Winner	NCSBA
Sarah Price	BGA
[illegible]	BOA
Colleen Kocharek	NCACP/NCCEP
Dick Taylor	NCATL

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

July 12, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. H Polk	Off. of G. Gov
Robert Arnold	DOC
Jason Stevens	DOJ/AG

SENATE JUDICIARY I COMMITTEE
(Civil)

July 17, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, July 17 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt, Vice Chair Phil Berger, Vice Chair Dan Clodfelter, Vice Chair R. C. Soles, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Janet Cowell, Sen. Clark Jenkins, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Richard Stevens, and Sen. Jerry Tillman.

Chairman Nesbitt recognized Rep. England, M.D. for House Bill 1671. Members received a Proposed Committee Substitute and the PCS was adopted through a motion by Sen. Albertson. Chairman Nesbitt called on staff attorney Bill Gilkeson to explain the bill. Chairman Nesbitt asked if the bill was amended, Gilkeson replied the bill was amended. Sen. Albertson motioned to pass the amendment. The motion passed unanimously. Sen. Albertson then moved for favorable report. After some discussion the motion passed unanimously.

Chairman Nesbitt then recognized Representative Crawford, Jr. for House Bill 610, an act setting a limit of 25 design-build contracts awarded by the Department of Transportation each fiscal year. Sen. Jenkins moved to adopt a Proposed Committee Substitute, and the PCS was unanimously adopted. Chairman Nesbitt called on staff attorney Bill Gilkeson to explain the bill. Mr. Gilkeson said that the bill deals with an error in 2002 statutes. Chairman Nesbitt called on Roger Roshell of the DOT, and asked what the pool of bidders is for various projects. Mr. Roshell said that the pool of bidders varies, and for a bridge project there would be between four and five contracts. Sen. Jenkins moved for favorable report, and the bill moved through committee with a unanimous vote.

Senate Bill 1081 was the next order of business, a bill providing for the expunction of convictions for certain nonviolent criminal offenses. Chairman Nesbitt called on Senator Weinstein to explain the bill. A Proposed Committee Substitute was distributed to members. Sen. Soles moved for adoption of the PCS. The PCS was adopted by unanimous vote.

Sen. Weinstein explained to the committee that he had received numerous letters from across the state asking for help, and noted stipulations of the bill. After discussion among committee members Sen. Jenkins moved for favorable report. The motion passed unanimously.

The meeting adjourned at 10:57 a.m.

A copy of the 3rd Edition of House Bill 1671, a Proposed Committee Substitute for HB 1671, A Bill Analysis for the PCS for HB 1671, Senator Albertson's Amendment to HB 1671, Senator Clodfelter's Amendment 1 to HB 1671, Senator Clodfelter's Amendment 2 to HB 1671, Senator Albertson's Amendment 2 to HB 1671, House Bill 610, a Proposed Committee Substitute for HB 610, the Bill Analysis for the PCS for HB 610, Senate Bill 1081, a Proposed Committee Substitute for SB 1081, and the Bill Analysis for the PCS to SB 1081 are attached to these Minutes as Attachment 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 3

HOUSE BILL 1671
Committee Substitute Favorable 5/15/07
Committee Substitute #2 Favorable 5/17/07

Short Title: Arbitration/Negligent Health Care Actions. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION FOR CAUSES OF ACTION FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED PROFESSIONAL NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES TO AN ACTION.

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 1H.

"Voluntary Arbitration for Actions for Negligent Health Care Claims.

"**§ 90-21.60. Voluntary arbitration; prior agreements to arbitration void.**

(a) This Article applies to any cause of action for damages for personal injury or wrongful death based on alleged professional negligence in the provision of health care where all parties to the action have agreed to submit the dispute to arbitration under this Article in accordance with the requirements of G.S. 90-21.61.

(b) Any contract or other agreement entered into prior to the commencement of an action that purports to require a party to elect arbitration under this Article is void and unenforceable. This Article does not impair the enforceability of any arbitration provision that does not specifically require arbitration under this Article.

"**§ 90-21.61. Requirements for submitting to arbitration.**

(a) The parties may elect at any time during the pendency of the action to file a stipulation with the court in which all parties to the action agree to submit the dispute to arbitration under this Article.

(b) Declaration to Not Arbitrate. – In the event that the parties do not unanimously agree to submit a dispute to arbitration under subsection (a) of this section, the parties shall file a declaration with the court prior to the discovery scheduling conference required by G.S. 1A-1, Rule 26(f1).

The declaration shall state that the attorney representing the party has presented the party with a copy of the provisions of this Article, that the attorneys representing the parties have discussed the provisions of this Article with the parties, and that there is not unanimous agreement to submit the dispute to arbitration under this Article. The declaration is without prejudice to the parties' subsequent agreement to submit the dispute to arbitration.

"§ 90-21.62. Selection of arbitrator.

(a) Selection by Agreement. – An arbitrator shall be selected by agreement of the parties no later than 45 days after the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The parties may agree to select more than one arbitrator to conduct the arbitration. The parties may agree in writing to the selection of a particular arbitrator or particular arbitrators as a precondition for a stipulation to arbitrate.

(b) Selection From Panel. – If the parties are unable to agree to an arbitrator by the time specified in subsection (a) of this section, the arbitrator shall be selected from a panel of special or retired superior court judges who agree to be on a list maintained by the Administrative Office of the Courts. Each party shall alternately strike one member of the panel, and the last remaining name on the list shall be the arbitrator.

"§ 90-21.63. Witnesses; discovery; depositions; subpoenas.

(a) The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding subject to the requirements of this section and G.S. 90-21.64. Except as provided in subsection (b) of this section, each side shall be entitled to two experts on the issue of liability, two experts on the issue of damages, and one rebuttal expert.

(b) Where there are multiple parties on one side, the arbitrator shall determine the number of experts that are allowed based on the minimum number of experts necessary to ensure a fair and economic resolution of the action.

(c) Notwithstanding G.S. 90-21.64(a)(1), unless the arbitrator determines that exceptional circumstances require additional discovery, each party shall be entitled to all of the following discovery from any other party:

(1) Twenty-five interrogatories, including subparts.

(2) Ten requests for admission.

(3) Whatever is allowed under applicable court rules for:

a. Requests for production of documents and things and for entry upon land for inspection and other purposes; and

b. Requests for physical and mental examinations of persons.

(d) Each party shall be entitled to all of the following depositions:

(1) Depositions of any party and any expert that a party expects to call as a witness. – Except by order of the arbitrator for good cause shown, the length of the deposition of a party or an expert witness under this subdivision shall be limited to four hours.

(2) Depositions of other witnesses. – Unless the arbitrator determines that exceptional circumstances require additional depositions, the total number of depositions of persons under this subdivision shall be

limited to five depositions per side, each of which shall last no longer than two hours and for which each side shall be entitled to examine for one hour.

(e) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon the motion to the court by a party to the arbitration proceeding or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

"**§ 90-21.64. Time limitations for arbitration.**

(a) The time frames provided in this section shall run from the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under the Article. Any arbitration under this Article shall be conducted according to the time frames as follows:

(1) Within 45 days, the claimant shall provide a copy to the defendants of all relevant medical records. Alternatively, the claimant may provide to the defendants a release, in compliance with the federal Health Insurance Portability and Accountability Act, for all relevant medical records, along with the names and addresses of all health care providers who may have possession, custody, or control of the relevant medical records. The provisions of this subdivision shall not limit discovery conducted pursuant to G.S. 90-21.63(c).

(2) Within 120 days, the claimant shall disclose to each defendant the name and curriculum vitae or other documentation of qualifications of any expert the claimant expects to call as a witness.

(3) Within 140 days, each defendant shall disclose to the claimant the name and curriculum vitae or other documentation of qualifications of any expert the defendant expects to call as a witness.

(4) Within 160 days, each party shall disclose to each other party the name and curriculum vitae or other documentation of qualifications of any rebuttal expert the party expects to call as a witness.

(5) Within 240 days, all discovery shall be completed.

(6) Within 270 days, the arbitration hearing shall commence.

(b) The arbitrator shall issue a case scheduling order in every proceeding specifying the dates by which the requirements of subdivisions (2) through (6) of subsection (a) of this section shall be completed.

(c) It is the express public policy of the General Assembly that arbitration hearings under this Article be commenced no later than 10 months after the parties file the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The arbitrator may grant a continuance of the commencement of the arbitration hearing only where a party shows that exceptional circumstances create an undue and unavoidable hardship on the party or where all parties consent to the continuance.

"**§ 90-21.65. Written decision by arbitration.**

(a) The arbitrator shall issue a decision in writing and signed by the arbitrator within 14 days after the completion of the arbitration hearing and shall promptly deliver a copy of the decision to each party or the party's attorneys.

(b) The arbitrator shall not make an award of damages that exceeds a total of one million dollars ($1,000,000) for any dispute submitted to arbitration under this Article, regardless of the number of claimants or defendants that are parties to the dispute.

(c) If the arbitrator makes an award of damages to the claimant, the arbitrator shall make a finding as to whether the injury or death to the plaintiff was caused by the negligence of the defendant.

(d) The fees and expenses of the arbitrator shall be paid by the nonprevailing parties.

"**§ 90-21.66. Judgment by court.**

After a party to the arbitration proceeding receives notice of a decision, the party may file a motion with the court for a judgment in accordance with the decision at which time the court shall issue such a judgment unless the decision is modified, corrected, or vacated as provided in G.S. 90-21.68.

"**§ 90-21.67. Retention of jurisdiction by court.**

The court shall retain jurisdiction over the action during the pendency of the arbitration proceeding. The court may, at the request of the arbitrator, enter orders necessary to enforce the provisions of this Article.

"**§ 90-21.68. Appeal of arbitrator's decision.**

There is no right to a trial de novo on an appeal of the arbitrator's decision under this Article. An appeal of the arbitrator's decision is limited to the bases for appeal provided under G.S. 1-569.23 or G.S. 1-569.24.

"**§ 90-21.69. Revised Uniform Arbitration Act not applicable.**

The provisions of Article 45C of Chapter 1 of the General Statutes do not apply to arbitrations conducted under this Article except to the extent specifically provided in this Article."

SECTION 2. G.S. 1-569.3 is amended by adding a new subsection to read:

"(c) This Article does not govern arbitrations under Article 1H of Chapter 90 of the General Statutes."

SECTION 3. This act becomes effective January 1, 2008, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1671

Committee Substitute Favorable 5/15/07

Committee Substitute #2 Favorable 5/17/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1671-CSRR-39 [v.8]

7/16/2007 8:20:13 PM

Short Title: Arbitration/Negligent Health Care Claims. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION OF CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES.

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 1H.

"Voluntary Arbitration of Negligent Health Care Claims.

"**§ 90-21.60. Voluntary arbitration; prior agreements to arbitration void.**

(a) Application of Article. -- This Article applies to all claims for damages for personal injury or wrongful death based on alleged negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11 where all parties have agreed to submit the dispute to arbitration under this Article in accordance with the requirements of G.S. 90-21.61.

(b) When Agreement is Void. -- Except as provided in G.S. 90-21.61(a), any contract provision or other agreement entered into prior to the commencement of an action that purports to require a party to elect arbitration under this Article is void and unenforceable. This Article does not impair the enforceability of any arbitration provision that does not specifically require arbitration under this Article.

"**§ 90-21.61. Requirements for submitting to arbitration.**

(a) Before Action is Filed. -- Before an action is filed, a person who claims damages for personal injury or wrongful death based on alleged negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11 and the allegedly negligent health care provider may jointly submit their dispute to arbitration

under this Article by, acting through their attorneys, filing a stipulation to arbitrate with the clerk of superior court in the county where the negligence allegedly occurred. The filing of such a stipulation provides jurisdiction to the superior court to enforce the provisions of this Article and tolls the statute of limitations.

(b) Once Action is Filed. -- The parties to an action for damages for personal injury or wrongful death based on alleged negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11 may elect at any time during the pendency of the action to file a stipulation with the court in which all parties to the action agree to submit the dispute to arbitration under this Article.

(c) Declaration Not to Arbitrate. – In the event that the parties do not unanimously agree to submit a dispute to arbitration under subsection (a) of this section, the parties shall file a declaration with the court prior to the discovery scheduling conference required by G.S. 1A-1, Rule 26(f1).

The declaration shall state that the attorney representing the party has presented the party with a copy of the provisions of this Article, that the attorneys representing the parties have discussed the provisions of this Article with the parties and with each other, and that the parties do not unanimously agree to submit the dispute to arbitration under this Article. The declaration is without prejudice to the parties' subsequent agreement to submit the dispute to arbitration.

"**§ 90-21.62. Selection of arbitrator.**

(a) Selection by Agreement. – An arbitrator shall be selected by agreement of all the parties no later than 45 days after the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The parties may agree to select more than one arbitrator to conduct the arbitration. The parties may agree in writing to the selection of a particular arbitrator or particular arbitrators as a precondition for a stipulation to arbitrate.

(b) Selection From List. – If all the parties are unable to agree to an arbitrator by the time specified in subsection (a) of this section, the arbitrator shall be selected from emergency superior court judges who agree to be on a list maintained by the Administrative Office of the Courts. Each party shall alternately strike one name on the list, and the last remaining name on the list shall be the arbitrator. The emergency superior court judge serving as an arbitrator would be compensated by the Administrative Office of the Courts at the same rate as an emergency judge serving in superior court.

"**§ 90-21.63. Witnesses; discovery; depositions; subpoenas.**

(a) General Conduct of Arbitration; Experts. -- The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding subject to the requirements of this section and G.S. 90-21.64. Except as provided in subsection (b) of this section, each side shall be entitled to two experts on the issue of liability, two experts on the issue of damages, and one rebuttal expert.

(b) Experts in Case of Multiple Parties. -- Where there are multiple parties on one side, the arbitrator shall determine the number of experts that are allowed based on the

minimum number of experts necessary to ensure a fair and economic resolution of the action.

(c) Discovery. -- Notwithstanding G.S. 90-21.64(a)(1), unless the arbitrator determines that exceptional circumstances require additional discovery, each party shall be entitled to all of the following discovery from any other party:

(1) Twenty-five interrogatories, including subparts.

(2) Ten requests for admission.

(3) Whatever is allowed under applicable court rules for:

a. Requests for production of documents and things and for entry upon land for inspection and other purposes; and

b. Requests for physical and mental examinations of persons.

(d) Depositions. -- Each party shall be entitled to all of the following depositions:

(1) Depositions of any party and any expert that a party expects to call as a witness. – Except by order of the arbitrator for good cause shown, the length of the deposition of a party or an expert witness under this subdivision shall be limited to four hours.

(2) Depositions of other witnesses. – Unless the arbitrator determines that exceptional circumstances require additional depositions, the total number of depositions of persons under this subdivision shall be limited to five depositions per side, each of which shall last no longer than two hours and for which each side shall be entitled to examine for one hour.

(e) Subpoenas. -- An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon the motion to the court by a party to the arbitration proceeding or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

"**§ 90-21.64. Time limitations for arbitration.**

(a) Time Frames. -- The time frames provided in this section shall run from the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under the Article. Any arbitration under this Article shall be conducted according to the time frames as follows:

(1) Within 45 days, the claimant shall provide a copy to the defendants of all relevant medical records. Alternatively, the claimant may provide to the defendants a release, in compliance with the federal Health Insurance Portability and Accountability Act, for all relevant medical records, along with the names and addresses of all health care providers who may have possession, custody, or control of the relevant medical records. Th e provisions of this subdivision shall not limit discovery conducted pursuant to G.S. 90-21.63(c).

(2) Within 120 days, the claimant shall disclose to each defendant the name and curriculum vitae or other documentation of qualifications of any expert the claimant expects to call as a witness.

(3) Within 140 days, each defendant shall disclose to the claimant the name and curriculum vitae or other documentation of qualifications of any expert the defendant expects to call as a witness.

(4) Within 160 days, each party shall disclose to each other party the name and curriculum vitae or other documentation of qualifications of any rebuttal expert the party expects to call as a witness.

(5) Within 240 days, all discovery shall be completed.

(6) Within 270 days, the arbitration hearing shall commence.

(b) Scheduling Order. -- The arbitrator shall issue a case scheduling order in every proceeding specifying the dates by which the requirements of subdivisions (2) through (6) of subsection (a) of this section shall be completed. The scheduling order also shall specify a deadline for the service of dispositive motions and briefs.

(c) Public Policy as to When Hearings Begin. -- It is the express public policy of the General Assembly that arbitration hearings under this Article be commenced no later than 10 months after the parties file the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The arbitrator may grant a continuance of the commencement of the arbitration hearing only where a party shows that exceptional circumstances create an undue and unavoidable hardship on the party or where all parties consent to the continuance.

"**§ 90-21.65. Written decision by arbitration.**

(a) Issuing the Decision. -- The arbitrator shall issue a decision in writing and signed by the arbitrator within 14 days after the completion of the arbitration hearing and shall promptly deliver a copy of the decision to each party or the party's attorneys.

(b) Limit on Damages. -- The arbitrator shall not make an award of damages that exceeds a total of one million dollars ($1,000,000) for any dispute submitted to arbitration under this Article, regardless of the number of claimants or defendants that are parties to the dispute.

(c) Finding if Damages Awarded. -- If the arbitrator makes an award of damages to the claimant, the arbitrator shall make a finding as to whether the injury or death was caused by the negligence of the defendant.

(d) Paying the Arbitrator. -- The fees and expenses of the arbitrator shall be paid equally by the parties.

"**§ 90-21.66. Judgment by court.**

After a party to the arbitration proceeding receives notice of a decision, the party may file a motion with the court for a judgment in accordance with the decision at which time the court shall issue such a judgment unless the decision is modified, corrected, or vacated as provided in G.S. 90-21.68.

"**§ 90-21.67. Retention of jurisdiction by court.**

The court shall retain jurisdiction over the action during the pendency of the arbitration proceeding. The court may, at the request of the arbitrator, enter orders necessary to enforce the provisions of this Article.

"**§ 90-21.68. Appeal of arbitrator's decision.**

There is no right to a trial de novo on an appeal of the arbitrator's decision under this Article. An appeal of the arbitrator's decision is limited to the bases for appeal provided under G.S. 1-569.23 or G.S. 1-569.24.

"**§ 90-21.69. Revised Uniform Arbitration Act not applicable.**

The provisions of Article 45C of Chapter 1 of the General Statutes do not apply to arbitrations conducted under this Article except to the extent specifically provided in this Article."

SECTION 2. G.S. 1-569.3 is amended by adding a new subsection to read:

"(c) This Article does not govern arbitrations under Article 1H of Chapter 90 of the General Statutes."

SECTION 3. This act becomes effective January 1, 2008, and applies to actions filed on or after that date.

HOUSE BILL 1671:
Arbitration/Negligent Health Care Actions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 16, 2007
Introduced by:	Reps. England, Glazier, Rapp, Allen	**Summary by:**	William R. Gilkeson
Version:	PCS to Third Edition H1671-CSRR-39		Committee Co-Counsel

SUMMARY: ***This new Proposed Committee Substitute for House Bill 1671 creates a new Article 1H in Chapter 90, Voluntary Arbitration for Actions for Negligent Health Care Claims, to provide for the voluntary arbitration of personal injury or wrongful death actions based on negligence in the provision of health care.***

The new PCS makes the following changes to the version previous presented to the Committee:

- ***Allows the submission of a dispute over a health care negligence claim to be submitted to arbitration before an action is filed. If the claimant and the provider submit to arbitration before an action is filed, the statute of limitations for filing the action is tolled.***
- ***Ties the kind of disputes covered to negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11. (Copied on p. 3 of the summary.)***
- ***Provides that an emergency superior court judge who serves as an arbitrator will be paid at the same rate as if he were serving in superior court.***

BILL ANALYSIS: The PCS applies to any claim for personal injury or wrongful death damages based on alleged negligence in the provision of health care by a health care provider.

Arbitration requirements. The parties may elect before or after the filing of an action to file a stipulation with the court agreeing to submit to arbitration under this Article and must file a declaration with the court prior to the discovery scheduling conference if an agreement is not reached. If the parties go to arbitration before the action is filed, the statute of limitations for filing the action is tolled.

Selection of arbitrator. An arbitrator is selected by agreement of all the parties within 45 days of the stipulation. If an agreement is not reached, the arbitrator is selected from emergency superior court judges who agree to be on a list maintained by the Administrative Office of the Courts. The parties each strike names from the list until one last name remains.

Witnesses and discovery. Each side is entitled to two experts on liability, two experts on damages, and one rebuttal expert and is entitled to the following discovery:

- 25 interrogatories.
- 10 requests for admission.
- Whatever is allowable under court rules for requests for production of documents and for mental and physical examinations.
- Depositions of any party and any expert that the party expects to call as a witness, and 5 depositions per side for other witnesses, unless exceptional circumstances require otherwise.

An arbitrator may issue a subpoena for the attendance of a witness and the production of records.

Time Limits. Within 45 days of stipulation to arbitration, the parties must submit a copy of all relevant medical records or a release for medical records. Within 120 days, the claimant shall disclose to each defendant the name and curriculum vitae of expert witnesses (140 days for the defendant). Within 160 days, each party shall disclose the name and curriculum vitae of rebuttal experts. Within 240 days, all discovery shall be completed and within 270 days the arbitration hearing shall begin.

Written decision. Within 14 days after completion of the hearing, the arbitrator shall issue and sign a decision in writing. **An award under this article may not exceed $1,000,000 dollars.**

Judgment by court. After receiving notice of a hearing, the party may file a motion with the court for a judgment at which time the court shall issue a judgment unless the decision is modified, corrected, or vacated.

Appeal. There is no right to a trial de novo on appeal. Appeals are limited to bases found in G.S. 1-569.23 and G.S. 1-569.24 including cases of fraud, refusal to postpone a hearing upon sufficient cause, or mathematical miscalculation. *(See copies of those statutes on page 2 of this summary.)*

EFFECTIVE DATE: The PCS would become effective January 1, 2008, and apply to actions filed on or after that date.

Tim Hovis, Co-Counsel to House Judiciary I, contributed substantially to this summary.

§ 1-569.23. Vacating award.

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

a. Evident partiality by an arbitrator appointed as a neutral arbitrator;

b. Corruption by an arbitrator; or

c. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon a showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to G.S. 1-569.15 so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in G.S. 1-569.9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section shall be filed within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, unless the moving party alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known, or by the exercise of reasonable care would have been known, by the moving party.

(c) If the court vacates an award on a ground other than that set forth in subdivision (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4), or (6) of subsection (a) of this section, the rehearing may be held before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as the time provided in G.S. 1-569.19(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award pursuant to G.S. 1-569.24 is pending. (1927, c. 94, s. 16; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.24. Modification or correction of award.

(a) Upon motion made within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award. (1927, c. 94, s. 17; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 90-21.11. Definitions.

As used in this Article, the term "health care provider" means without limitation any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital or a nursing home; or any other person who is legally responsible for the negligence of such person, hospital or nursing home; or any other person acting at the direction or under the supervision of any of the foregoing persons, hospital, or nursing home.

As used in this Article, the term "medical malpractice action" means a civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider.

H1671e3-SMRR-CSRR-39

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1671

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

H1671-ARR-54 [v.1]

Date _____,2007

Comm. Sub. [YES]
Amends Title [NO]
H1671-CSRR-39

Representative _____

moves to amend the bill on page 2, line 11,
by deleting the term "(a)" and substituting the term "(b)"; and

on page 2, lines 31 through 34,
by rewriting the complete sentence on those lines to read:
"The parties shall compensate an emergency superior court judge serving as an arbitrator at the same rate as an emergency judge serving in superior court."; and

On page 4, line 12,
By deleting the term "actions filed" and substituting the term "agreements to arbitrate entered into".

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. 1671 DATE _____

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

COMMITTEE SUBSTITUTE V. 8

Rep.)
) _____
Sen.)

1 moves to amend the bill on page _____, line _____
2 ( ) WHICH CHANGES THE TITLE
3 by Amending Line 32 by deleting the words
4 "by the Administrative Office of the
5 Courts."
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SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment 6

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1671 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) _____

1 moves to amend the bill on page 4, line 32

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 inserting after that line the following:

5

6 "(e) Each party shall bear its

7 own ~~share of costs~~ and attorney's

8

9 fees and costs."

10

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13

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16

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SIGNED Daniel McCloskey

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. 1671 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) ALBERTSON
Sen.)

moves to amend the bill on page 2, line 11

( ) WHICH CHANGES THE TITLE

by deleting the term "(a)" and substituting the term "(b)"; and

on page 2, lines 32 and 33 by deleting the term "by the Administrative Office of the Courts", and

on page 5, line 12, by deleting the term "actions filed" and substituting the term "agreements to arbitrate entered into".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H **1**

HOUSE BILL 610

Short Title:	Design-Build Construction/Transportation.-AB	(Public)
Sponsors:	Representatives Crawford; Saunders and Wray.	
Referred to:	Ways and Means, if favorable, Transportation.	

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO SET THE NUMBER OF DESIGN-BUILD CONSTRUCTION CONTRACTS THAT MAY BE AWARDED BY THE DEPARTMENT OF TRANSPORTATION AT TWENTY-FIVE CONTRACTS EACH FISCAL YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.11(a) reads as rewritten:

"**§ 136-28.11. Design-build construction of transportation projects.**

(a) Design-Build Contracts Authorized. – Notwithstanding any other provision of law, the Board of Transportation may award contracts for ~~10 projects in fiscal year 2002-2003, and 25 projects in fiscal years 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009~~up to 25 projects each fiscal year for construction of transportation projects on a design-build basis."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 610
PROPOSED SENATE COMMITTEE SUBSTITUTE H610-CSRR-41 [v.1]

7/16/2007 8:54:34 PM

Short Title: Design-Build Construction/Transportation.-AB (Public)

Sponsors:

Referred to:

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO SET THE NUMBER OF DESIGN-BUILD CONSTRUCTION CONTRACTS THAT MAY BE AWARDED BY THE DEPARTMENT OF TRANSPORTATION AT TWENTY-FIVE CONTRACTS EACH FISCAL YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.11 reads as rewritten:

"**§ 136-28.11. Design-build construction of transportation projects.**

(a) Design-Build Contracts Authorized. – Notwithstanding any other provision of law, the Board of Transportation may award contracts for ~~10 projects in fiscal year 2002-2003, and 25 projects in fiscal years 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009~~up to 25 projects each fiscal year for construction of transportation projects on a design-build basis."

(b) Design-Build Contract Amounts; Basis of Award. – The Department may award contracts for the construction of transportation projects on a design-build basis of any amount. The Department shall endeavor to ensure design-build projects are awarded on a basis to maximize participation, competition, and cost benefit. On any project for which the Department proposes to use the design-build contracting method, the Department shall attempt to structure and size the contracts for the project in order that contracting firms and engineering firms based in North Carolina have a fair and equal opportunity to compete for the contracts.

(c) Disadvantaged Business Participation Goals. – The provisions of G.S. 136-28.4 and 49 C.F.R. Part 26 shall apply to the award of contracts under this section.

(d) Findings Required. – These contracts may be awarded after a determination by the Department of Transportation that delivery of the projects must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures.

(e) Reporting Requirements. – The Department, for any proposed design-build project projected to have a construction cost in excess of ~~one hundred~~ fifty million

dollars ~~($100,000,000),~~ ($50,000,000), shall present to the Joint Legislative Transportation Oversight Committee information on the scope and nature of the project and the reasons the development of the project on a design-build basis will best serve the public interest. ~~Prior to the award of a design-build contract, the Secretary of Transportation shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations on the nature and scope of the project and the reasons an award on a design-build basis will best serve the public interest.~~"

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

HOUSE BILL 610:
Design-Build Construction/Transportation.-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 16, 2007
Introduced by:	Rep. Crawford	**Summary by:**	William R. Gilkeson
Version:	PCS to First Edition H610-CSRR-41		Committee Co-Counsel

SUMMARY: ***This Proposed Committee Substitute for House Bill 610 would remove the sunset on the authority of the Board of Transportation to award up to 25 contracts each fiscal year using the design-build method. The bill was requested by the Department of Transportation.***

[As introduced, this bill was identical to S798, as introduced by Sen. Jenkins, which is currently in Senate Appropriations/Base Budget.]

CURRENT LAW: Under current law, the Board of Transportation is authorized to award up to 25 projects each fiscal year from 2003-04 to 2008-09 using the design-build method. 'Design–build" is a contracting method under which one entity performs both design and construction of a project under a single contract.

The General Assembly has gradually extended the authority to award design-build contracts during this decade. In the 2001 Appropriations Bill, the General Assembly authorized the Board of Transportation to award up to 3 design-build contracts annually. That 2001 legislation said the Board had to first determine that delivery of the projects must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures. Before awarding those contracts, DOT was required to report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations.

Then in 2002, the General Assembly expanded the Board's authority to allow design-build contracts to 10 for the 2002-03 fiscal year, and 25 each for each the fiscal years from 2003-04 to 2008-09. With this expansion, the General Assembly retained the must-be-expedited determination and added several other requirements:

- DOT must endeavor to maximize participation, competition, and cost-benefit.
- DOT must "attempt to structure and size the contracts . . . in order that contracting firms and engineering firms based in North Carolina have a fair and equal opportunity to compete . . ."
- The goals of participation by disadvantaged businesses apply to design-build contracts.

BILL ANALYSIS: The PCS for House Bill 610 would remove the sunset on the authority of the Board of Transportation to award up to 25 contracts each fiscal year using the design-build method.

The PCS would also correct and change the reporting provision in the statute. In the 2002 legislation that expanded from 3 to 25 the number of design-build contracts DOT could do, the General Assembly apparently attempted to limit the contracts about which DOT must make reports to a legislative committee to those above $100,000,000. However, the legislation did not repeal the requirement that all contracts be reported to Transportation Oversight and Gov Ops. The PCS repeals the requirement to report all design-build contracts, but reduces the threshold of contracts that must be reported on to Transportation Oversight to from $100,000,000 to $50,000,000.

The bill would not change any of the other requirements of DOT for choosing a design-build contract.

The bill is an agency bill requested by DOT.

EFFECTIVE DATE: The bill would be effective upon becoming law.

Giles Perry, counsel to the House Transportation Committee, contributed substantially to this summary.

H0610e1-SMRR-CSRR-41

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1081

Short Title:	Expunge Nonviolent Crimes.	(Public)
Sponsors:	Senators Weinstein, Kinnaird; Albertson, Allran, Atwater, Berger of Franklin, Bingham, Brunstetter, Clodfelter, Cowell, Dannelly, Dorsett, Foriest, Graham, Hagan, Hartsell, Jenkins, Jones, Malone, Purcell, Shaw, Snow, and Stevens.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT AGENCIES AND FEDERALLY INSURED DEPOSITORY INSTITUTIONS FOR EMPLOYMENT PURPOSES ONLY AND TO REQUIRE THOSE AGENCIES AND INSTITUTIONS TO MAINTAIN THE CONFIDENTIALITY OF THE EXPUNGED INFORMATION, TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, TO INCREASE THE FEES FOR EXPUNCTIONS, AND TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-150. Expunction of records for conviction of certain nonviolent criminal offenses if there are no subsequent criminal convictions for at least 10 years.**

(a) For purposes of this section, the term 'nonviolent criminal offense' means a misdemeanor, Class H felony, or Class I felony; however, the term does not include any of the following:

(1) An offense that includes assault as an essential element of the offense.

(2) An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes.

(3) An offense that includes the possession or use of a firearm as an essential element of the offense or is used as an aggravating factor in sentencing.

(4) An offense that is trafficking under G.S. 90-95(h).

(5) An offense that involves impaired driving.

(b) Whenever a person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state, has no outstanding warrants or pending criminal cases, and has not previously obtained an expunction under this section pleads guilty to or is guilty of a nonviolent criminal offense, the person may file a petition in the court where he or she was convicted for expunction of the nonviolent criminal offense from the person's criminal record. The petition cannot be filed earlier than 10 years after the date of the conviction, period of active sentence, period of post-release supervision, or period of probation has been completed, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he or she has been of good behavior for the 10-year period since the date of conviction of the nonviolent criminal offense in question, has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, has no outstanding warrants or pending criminal cases, and has not previously obtained an expunction under this section.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the person's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court where the case was tried resulting in conviction. The district attorney shall have 10 days to file any objection to the petition and shall be notified as to the date of the hearing of the petition.

The judge to whom the petition is presented may call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the 10-year period that the judge deems desirable.

(c) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for 10 years from the date of conviction of the nonviolent criminal offense in question, the petitioner has not previously obtained an expunction under this section, the petitioner has no outstanding warrants or pending criminal cases, and the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, then the court shall order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest, indictment, conviction, or information for the nonviolent criminal offense. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, indictment, conviction, information, trial, or response to any inquiry made of the person for any purpose.

(d) The court shall also order that the conviction for the nonviolent criminal offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Expunction of records under this section may occur only once with respect to any person.

(e) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his or her county, file with the Administrative Office of the Courts the names of those persons granted expunctions under the provisions of this section and the offenses for which the expunctions were granted, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted expunctions and the offenses for which the expunctions were granted. The information contained in the file shall be disclosed only as follows:

(1) To judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expunction.

(2) To State and local law enforcement agencies for employment purposes only.

(3) To federally insured depository institutions for employment purposes only.

(f) A person who knowingly and willfully discloses or uses in an unauthorized manner information obtained under subsection (e) of this section, except as otherwise permitted by that subsection, is guilty of a Class 3 misdemeanor.

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of two hundred dollars ($200.00) at

the time the petition is filed. One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has not previously obtained an expunction under this section and has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has not previously obtained an expunction under this section and that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.~~

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner ~~had~~ has not previously obtained an expunction under this section, the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the conviction in question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this

section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~one hundred twenty-five dollars ($125.00)~~two hundred dollars ($200.00) at the time the petition is filed. ~~Fees collected under this subsection shall be deposited in the General Fund.~~One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 3. G.S. 90-96(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.~~

(3) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, and

a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation."

SECTION 4. G.S. 90-96(f) reads as rewritten:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~sixty-five dollars ($65.00)~~ two hundred dollars ($200.00) at the time the petition is filed. ~~Fees collected under this subsection shall be deposited in the General Fund.~~ One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 5. G.S. 90-113.14(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

(3) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by

the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation."

SECTION 6. G.S. 90-113.14 is amended by adding a new subsection to read:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of two hundred dollars ($200.00) at the time the petition is filed. One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 7. This act becomes effective December 1, 2007, and applies to applications for expunction of records made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1081
PROPOSED COMMITTEE SUBSTITUTE S1081-CSST-80 [v.6]

7/16/2007 4:40:45 PM

Short Title: Expunge Nonviolent Crimes. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES UPON APPLICATION AND A FEE, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT AGENCIES AND OTHER SPECIFIED AGENCIES FOR EMPLOYMENT AND LICENSING PURPOSES AND TO REQUIRE THOSE AGENCIES AND TO MAINTAIN THE CONFIDENTIALITY OF THE EXPUNGED INFORMATION, AND TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES..

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-150. Expunction of records for conviction of certain nonviolent criminal offenses.**

(a) A person may file a petition in the court where the person was convicted for expunction of a felony conviction from the person's criminal record if all of the following criteria are met:

(1) The person, at the time of the felony offense, had not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(2) The conviction is for a felony violation of any of the following:

a. G.S. 14-54 – breaking into

b. G.S. 14-56. – breaking into car, etc.

c. G.S. 14-71.1. – poss. stolen prop

d. G.S. 14-100 where the thing of value is less than one hundred thousand dollars ($100,000).

e. G.S. 90-95(d)(4). – poss. Schedule controlled sub. Pot

(3) The person, at the time of the petition has no convictions other than the conviction to be expunged and traffic violations under the laws of the United States, the laws of this State, or any other state.

(b) The petition may not be filed earlier than ten years after the date of the felony conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain all of the following:

(1) An affidavit by the petitioner stating all of the following:

a. That the petitioner has been of good moral character for the ten-year period since the date of the felony conviction in question.

b. That the petitioner had not been convicted of any other felony or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

c. That the petition has no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner outstanding.

(2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage and were not involved in the actions giving rise to the felony conviction in question, that:

a. The person knows the character and reputation of the petitioner in the community in which the petitioner lives.

b. The petitioner's character and reputation are good.

c. The petitioner is and has been of good moral character for the ten-year period since the date of the felony conviction in question.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing all of the following:

a. A State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual.

b. A search by the Department of Justice for any outstanding warrants or pending criminal cases.

c. A search of the confidential record of expunctions maintained by the Administrative Office of the Courts.

(c) The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection to the petition and shall be duly notified as to the date of the hearing on the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. The application required by subsection (b)(4) of this section shall be

forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(d) The court in which the petition was filed may take any of the following steps and may consider at least the following issues in rendering a decision upon a petition for expunction of records of a felony conviction under this section:

(1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the ten-year period since the date of conviction of the felony conviction in question.

(2) Review the results of the State and national criminal record check by the Department of Justice and Administrative Office of the Courts.

(3) Review the amount of restitution, if any, made by the petitioner to the victim of the felony conviction to be expunged and give consideration to whether or not restitution was paid in full.

(4) Review any other information the court deems relevant, including affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of the felony committed by the petitioner.

(e) The court may order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character for ten years from the date of conviction of the felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

(f) No person as to whom an order has been entered pursuant to subsection (e) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapters 17C or 17E of the General Statutes shall disclose any and all felony convictions to the certifying commission regardless of whether or not the felony convictions were expunged under this section.

(g) The court shall also order that the felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge that agency's records of the felony conviction. The clerk shall forward a

certified copy of the order to the sheriff, chief of police, or other arresting law enforcement agency. The sheriff, chief of police, or head of any other arresting law enforcement agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(h) A person as to whom an order has been entered pursuant to subsection (e) of this section may notify any other applicable State or local government agency of the order, and that State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The person may also request that the State or local government agency reverse any administrative actions taken against that person as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(i) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted expunctions under this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted expunctions. The information contained in the file shall be disclosed only as follows:

(1) To judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(2) To federal, State and local law enforcement agencies for employment purposes only.

(3) To the North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.

(4) To the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only.

(5) To federally insured depository institutions for employment purposes only.

(6) To the North Carolina State Bar and the Board of Law Examiners for licensing purposes only.

(7) To the North Carolina State Board of Certified Public Accountant Examiners for licensing purposes only.

(8) To local boards of education for employment purposes only.

(9) To the Department of Health and Human Services for licensing purposes and placement purposes if a criminal history check is mandated for the license or placement.

(j) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of two hundred dollars ($200.00) at the time the petition is filed. One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted

to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 17C-13 reads as rewritten:

"**§ 17C-13. Pardons.**

(a) When a person presents competent evidence that he has been granted an unconditional pardon for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for an alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend or revoke a person's certification based solely on that person's felony conviction, whether or not the felony conviction was expunged."

SECTION 3. G.S. 17E-12 reads as rewritten:

"**§ 17E-12. Pardons.**

(a) When a person presents competent evidence that the person has been granted an unconditional pardon of innocence for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend or revoke a person's certification based solely on that person's felony conviction, whether or not the felony conviction was expunged."

SECTION 4. This act becomes effective December 1, 2007, and applies to applications for expunction of records made on or after that date.

SENATE BILL 1081: Expunge Nonviolent Crimes

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 16, 2007
Introduced by:	Sen. Weinstein	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S1081-CSST-80 v.6		Committee Counsel

SUMMARY: Senate Bill 1081 would create a procedure for one time expunction of certain, limited nonviolent criminal offenses, and set fees for that expunction.

CURRENT LAW:

- ***G.S. 7B-3200*** provides for expunction of adjudications of undisciplined and delinquent.
- ***G.S. 15A-145*** provides for expunction of records of first offenders under the age of 18 at the time of conviction for misdemeanors.
- ***G.S. 15A-149*** provides for expunction of records when a pardon of innocence is granted.
- ***G.S. 90-96(b)*** provides for expunction of certain offenses related to controlled substances for first time offenders under the age of 21 placed on probation under G.S. 90-96(a), following the dismissal of the person and discharge of the proceedings.
- ***G.S. 90-113.14(b)*** provides for expunction of certain offenses related to the Toxic Vapors Act for first time offenders under the age of 21 placed on probation under G.S. 90-113.14(a), following the dismissal of the person and discharge of the proceedings.

BILL ANALYSIS:

Section 1. The proposed committee substitute would create a new statute section to set forth the procedure to follow to expunge certain non-violent crimes from a person's criminal record.

Under this procedure, only persons convicted of the following crimes may petition the court for an expunction:

- G.S. 14-54 - Breaking or entering buildings generally.
- G.S. 14-56 - Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft.
- G.S. 14-71.1 - Possessing stolen goods.
- G.S. 14-100 - Obtaining property by false pretenses -- if the property is less than $100,000.
- G.S. 90-95(d)(4) - Possession of a Schedule VI controlled substance.

The petitioner must meet all of the following criteria:

1. Have no convictions other than traffic violations and the conviction giving rise to the petition for expunction.
2. Wait 10 years from the latest of the following dates before filing the petition:
   - Date of conviction.
   - Date of completion of any active sentence, period of probation and post-release supervision.
3. Have been of good moral character since the date of conviction.

4. Have no outstanding restitutions orders or civil judgments for restitution.
5. Have paid the fee of $200.

Upon the filing of the petition, the district attorney of the court wherein the case resulting in the conviction was tried is to be notified and given 30 days to file an objection to the expunction. The district attorney is to use best efforts to contact the victim and notify the victim of the request for expunction.

The order of expunction may be ordered by the court if all of the following are found by the court:

1. The petitioner is of good moral character for 10 years.
2. The petitioner has no other criminal convictions other than traffic violations.
3. The petitioner has no outstanding warrants or pending criminal cases.
4. The petitioner has no outstanding restitutions orders or civil judgments for restitution.
5. The petitioner has not previously been granted an expunction.

If the court grants the expunction, the court is to notify all law enforcement agencies bearing record of the conviction to expunge that agency's records of the conviction. The petitioner may notify other applicable State or local government agencies of the court order, and that State or local agency must then expunge that agency's records of the conviction.

The Administrative Office of the Courts is to maintain a confidential file of the names of person's granted an expunction under this procedure. That information shall be available to all of the following:

- Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.
- Federal, State and local law enforcement agencies for employment purposes only.
- The North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.
- The North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only.
- Federally insured depository institutions for employment purposes only.
- The North Carolina State Bar and the Board of Law Examiners for licensing purposes only.
- The North Carolina State Board of Certified Public Accountant Examiners for licensing purposes only.
- Local boards of education for employment purposes only.
- The Department of Health and Human Services for licensing purposes and placement purposes if a criminal history check is mandated for the license or placement.

Sections 2-3. The pcs makes conforming changes to the Criminal Justice Education and Training Standards Commission and Sheriffs' Education and Training Standards Commission to reflect that those Commissions may access the AOC file of the expunction.

EFFECTIVE DATE: December 1, 2007, and applies to applications for expunction on or after that date.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 17, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Jamal Jones	NCHA
John Borchuck	AstraZeneca
R. Paul Wilms	NCHBA
DANIEL PSAUM	KENNEDY COVINGTON
Betsy Bailey	PENC
ANTHONY ALLEN	NCACC
CASANDRA WHITE	GOV. OFFICE
Rodger Rochelle	NCDOT
SCOTT SCHERER	MEDIA

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

July 17, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pully	NCATL
John McMillan	AFLS
STEVE KEENE	NCMS
Burton Craige	NCATL
Roz Savitt	NCCCC
Tom Miller	NCAGO / NCREC
BERRY JENKINS	CAROLINAS AGC
Susan Conard	NCDOT
Tim McDowell	NCICU
Dallas Woodhouse	Americans for Prosperity - NC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 17, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Russ Dubishy	IFNC
Joe Stewart	IFNC
[signature]	AOC
Todd Bolen	NCATC
[signature]	DHHS
[signature]	DHHS
Alice Garland	NCEL
Adam S. Keith	NCGA Staff
Pey Dorer	Conference of DAs
[signature]	Conference of DA's
Christine Wunsche	10G- Daily Bulletin

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

July 17, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rita Dugue	SBE
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Martin Pharr	NC DJJDP
Jeff Gray	FOP
John Phelps	NCLM
Jim Blackburn	NC Association of County Commissioners

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 17, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valaoras	Nationwide
Eddie Caldwell	NC Sheriffs' Assn.
Doug Horan	BAR ASSN
Colleen Kochanek	Smith Moore
FRANK W. FOLGER	HELMS MULLISS WICKER

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, July 17, 2007
10:00 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 1081	Expunge Nonviolent Crimes.	Senator Weinstein
HB 349	Local School Board Member Removal.	Representative Glazier
HB 610	Design-Build Construction/Transportation.-AB	Representative Crawford, Jr.
HB 976	Public Vehicular Areas Defined.	Representative Boylan
HB 1231	Certain Law Officers/Waive Handgun Permit.	Representative Gibson, III Representative Daughtridge, Jr.
HB 1671	Arbitration/Negligent Health Care Actions.	Representative England, M.D.

Adjournment.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Wednesday, July 18, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1081** Expunge Nonviolent Crimes.

Draft Number:	PCS 55537
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Tuesday, July 17, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **610** Design-Build Construction/Transportation.-AB

Draft Number:	PCS 50743
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1671** Arbitration/Negligent Health Care Actions.

Draft Number:	PCS 60383
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

SENATE JUDICIARY I COMMITTEE
(Civil)

July 19, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Thursday, July 19 in Room 1027 of the Legislative Building. A quorum was present.

Senator Nesbitt called the meeting to order and recognized Rep. Pryor Gibson to explain the 3rd edition of HB 1231 (Certain Law Officers/Waive Handgun Permit). A proposed committee substitute was distributed to the committee and Senator Brunstetter moved that it be adopted. The motion passed.

Rep. Gibson said that the bill is essentially for retired law enforcement officers and that the PCS has changed the original bill to add armored cars guards.

Anna Lore representing Duke University spoke in favor of the bill, as did Eddie Caldwell with the North Carolina Sherriff Association.

Committee Counsel, Hal Pell, was recognized to give an analysis of the bill. He said in the U.S. Code authorizes current law enforcement officers and certain retired law enforcement officers to carry a concealed weapon without a concealed carry permit. The federal law requires that certain criteria be met, and that the officers be able to provide certain types of identification indicating that the officer or retired officer meets the criteria.

Mr. Pell added that North Carolina does not currently have a process for retired law enforcement to obtain the identification required by federal law. HB 1231 sets out that process.

Senator Brown moved to give the proposed committee substitute bill a favorable report, unfavorable to original bill.

There was discussion about guns being allowed on Campuses.

Senator Brown's motion was before the committee and passed unanimously. The bill was re-referred to the Senate Finance Committee.

Senator Nesbitt next recognized Rep. Boylan to explain HB 976 (Public Vehicular Areas Defined.) A proposed committee substitute was distributed to the committee and Senator Tillman moved that it be adopted for consideration. The motion passed.

Committee Counsel, Hal Pell, said the committee substitute is a "subcommittee bill" that changes the definition of "public vehicular area" in the motor vehicle law of the state to include road within or leading to gated subdivisions or communities, and requires persons responsible for the controlled access systems at gated subdivisions or communities to provide a means of access for all emergency service vehicles.

Senator Tillman moved to give the proposed committee substitute a favorable report, unfavorable to original bill and the motion passed.

Senator Kinnaird was recognized to speak on SB 1079 (Protections for Victims of Human Trafficking). A proposed committee substitute was distributed to the committee and Senator Kinnaird moved that it be adopted for consideration. The motion passed.

Senator Kinnaird told the committee that she first heard of "human trafficking" while she attended a conference for women legislators in Washington, D.C. At the time she wasn't aware that North Carolina had a problem with this, but learned otherwise.

Senator Kinnaird told the committee that the bill would amend the State human trafficking law to allow any victim to obtain benefits under the Crime Victims Rights Act, and authorizes Legal Aid of North Carolina to assist the victim in obtaining any available federal assistant.

Committee Counsel Hal Pell gave an extensive analysis of the bill.

- **Section 1:** Provides that persons who are not legal residents of the State would be authorized to receive State benefits and services if they are human trafficking victims.
- **Section 2**: Makes human trafficking victims eligible under the Crime Victims Rights Act.
- **Section3**: Required the district attorney to notify the Office of the Attorney General, and Legal Aid of North Carolina, when a human trafficking victim qualifies under section 1 of the act.
- **Sections 4 through 7**: Amends the Attorney General's Address Confidentiality Program (ACP) to include human trafficking victims; makes conforming changes in the ACP statutes.
- **Section 8**: Makes a conforming change to the ACP, and directs the Attorney General to issue a letter of certification of eligibility, or like document, to a human trafficking victim when notified by a district attorney that the person is authorized by law to receive State benefits and services.
- **Section 9:** Amends the statutes that provide for legal aid and assistance by Legal Aid of North Carolina to include human trafficking victims as eligible clients.
- **Section 10**: Amends the statute describing eligible case for legal aid; authorizes legal aid to assist human trafficking victims in obtaining federal benefits and services.

- **Section 11**: Requires the North Carolina Justice Academy to establish training protocols, and make them available to all State and local law enforcement agencies. The protocols would include training on the phenomenon of human trafficking, the recognition and protection of victims, and providing information on benefits and services.
- **Section 12:** Authorizes an appropriation (non-recurring) of $50,000 to Legal Aid of North Carolina, Inc., for the 2007-2008 fiscal year, for legal assistance to trafficking victims.

Mr. Pell concluded that the appropriation is effective July 1, 2007, and the remainder is effective December 1, 2007, and for offenses occurring on or after that date.

Senator Soles said that victims would have access to federal resources, but would they have access to state resources?

Senator Kinnaird said that yes, the money would come from the Federal government and go to the State agencies to assist these victims.

Senator Tillman asked if these victims were Medicaid eligible and Senator Nesbitt said he assumed that they would be.

Senator Tillman moved to give the proposed committee substitute a favorable report, unfavorable as to original bill.

Extensive discussion followed on the issue of victim certification.

Senator Nesbitt recognized Greg McLeod from the State Attorney General's Office who explained their role as to the letter of certification for a victim. He was not clear why that responsibility would be theirs.

Hal Pell suggested an amendment that saying that they can have access to services as long as they remain human trafficking victim under Federal law. Senator Soles sponsored the amendment which passed unanimously.

When there was no further discussion, Senator Tillman moved to incorporate the amendment into a new proposed committee substitute, give that bill a favorable report, unfavorable to the original bill, and to re-refer the bill to the Senate Appropriations Committee. The motion passed.

Senator Nesbitt recognized Representative England for an explanation of the 3rd edition of HB 772 (Licensure Changes/Hosp. Adult Cr. Hms., HB.AB).

A Proposed Committee Substitute was distributed to the members and Senator Kinnaird moved for its adoption. The motion passed.

Rep. England told the committee that this is an agency bill, requested by the Department of Health and Human Services, whereupon, Committee Counsel, Erika Churchill, was recognized for comments on the bill.

She said that HB 772 authorizes the Secretary of Health and Human Services to suspend patient admission or specific services of a hospital; authorizes the Division of Health Service Regulation to temporarily waive hospital licensure during a declared disaster or emergency; allows private entities to perform State background checks of employees of mental health facilities; requires all fines to be paid prior to transferring ownership of adult care homes; and allows local departments of social services 60 days to complete complaint investigation of adult care homes.

Senator Stevens moved to amend the bill to basically define the term "private entity."

Ms. Churchill explained that history checks are required or authorized prior to the issuance of licenses, or permanent offers of employment for various occupations or jobs. General, the NC Department of Justice conducts the check, returns the information to the State and local agency authorized to conduct the check. For criminal checks of certain employees of nursing homes, adult care homes and home care agencies, the provider may opt to have a 'private entity' conduct the State criminal history check. The information is returned to the provider offering the employment.

When Ms. Churchill concluded her explanation, Senator Stevens' motion was before the committee and passed unanimously.

Senator Jenkins moved to incorporate the amendment into a new PCS, give that bill a favorable report, unfavorable as to original bill and the motion passed.

Rep. Rick Glazier was recognized to speak on HB 349 (Local School Board Member Removal).

Rep. Glazier told the committee that HB 349 would repeal the statutory provision that allows the State Board of Education to initiate the process of removing a local school board member. HB 349 would repeal G.S. 115C-39(a).

Senator Jenkins moved to give the bill a favorable report and the motion passed.

Senator Nesbitt recognized Rep. Dale Folwell to speak on HB 454 (Identify Theft). A Proposed Committee Substitute bill was distributed to the committee and Sen. Clodfelter moved to adopt the PCS for consideration.

Committee Counsel, Hal Pell, was recognized to explain the changes made in the PCS. He said the PCS would authorize the taking of a photograph of a motor vehicle operator under specified conditions. It would also provide a cause of action for a person whose personal information is published over their objection.

When there was no further discussion, Sen. Clodfelter moved the give the PCS a favorable report, unfavorable as to original bill. The motion passed.

Senator Nesbitt next turned to speak about HB 1284. A Proposed Committee Substitute was distributed to the committee and Sen. Brown moved that it be adopted for consideration. The motion passed.

Kara McCraw, Committee Counsel, was recognized to explain the PCS for HB 1284.

She said that Section 1 of the PCS to HB 1284 would amend G.S. 1-52(1) to provide that, unless otherwise provided by statute, if the three-year statute of limitation would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought no later than ninety days after substantial completion of the improvement. The term "substantial completion" as used in the subsection would have the same meaning as in G.S. 1-50.

Section 2 of the PCS to HB 1284 would amend G.S. 1-53(1) to provide that, unless otherwise provided by statute, if the two-year statute of limitation would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought no later than ninety days after substantial completion of the improvement. The term "substantial completion" as used in the subsection would have the same meaning as in G.S. 1-50.

Mr. Brian Schulman from Saffron Law Offices spoke in favor of the new PCS.

Rep. Stam said he introduced the bill so parties could have an opportunity to settle things before the ninety days were up.

Extension discussion ensued.

Leslie Winner, Vice President and General Counsel from UNC, she said she had concerns about claims against contractors. She also had problems with the statute of limitations running against the state.

Sen. Brunstetter was concerned about the term, "substantial completion" and offered an amendment to narrow that language. The motion passed.

Senator Tillman said he was satisfied with the bill and moved for a favorable report. The bill was carried over.

The meeting adjourned at 12:00 p.m.

Copies of the 3rd edition of House Bill 1231, a Proposed Senate Committee Substitute for HB 1231, a Bill Analysis for the PCS for HB 1231, the 3rd edition of House Bill 976, a Proposed Senate Committee Substitute for HB 976, a Bill Analysis for the PCS to HB 976, Senate Bill 1079, a Proposed Committee Substitute for SB 1079, a Bill Analysis for

the PCS for SB 1079, the 3rd edition for House Bill 772, a Proposed Senate Committee Substitute for HB 772, a Bill Analysis for the PCS to HB 772, Senator Stevens' Amendment to the PCS for HB 772, House Bill 349, a Bill Analysis for HB 349, the 2nd edition of House Bill 454, a Proposed Committee Substitute for the PCS for HB 454, a Bill Analysis for the PCS to HB 454, House Bill 1284, a Proposed Senate Committee Substitute for HB 1284, and a Bill Analysis for the PCS to HB 1284 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1231

Committee Substitute Favorable 5/22/07
Committee Substitute #2 Favorable 6/5/07

Short Title: Certain Law Officers/Waive Handgun Permit. (Public)

Sponsors:

Referred to:

March 29, 2007

A BILL TO BE ENTITLED

AN ACT TO WAIVE THE REQUIREMENT TO OBTAIN A CONCEALED HANDGUN PERMIT TO CARRY A CONCEALED HANDGUN FOR CERTAIN PERSONS AUTHORIZED BY FEDERAL LAW TO CARRY CONCEALED HANDGUNS AND FOR CERTAIN FEDERAL AND STATE RETIRED LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.10 is amended by adding a new subdivision to read:

"(6) Qualified retired law enforcement officer. – An individual who meets all of the following qualifications:

a. Retired in good standing from service with a public agency located in the United States as a law enforcement officer, other than for reasons of mental instability.

b. Prior to retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of, any person for any violation of law, and had statutory powers of arrest.

c. Prior to retirement, was regularly employed as a law enforcement officer for a total of 15 years or more, or retired after completing probationary periods of service due to a service-connected disability, as determined by the agency.

d. Has a vested right to benefits under the retirement plan of the agency."

SECTION 2. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(16) Establish standards and guidelines for the annual firearms certification of qualified retired law enforcement officers, as defined in

G.S. 14-415.10(6), to efficiently implement the provisions of G.S. 14-415.25. The standards shall provide for the courses, qualifications, and the issuance of the annual firearms qualification certification. The Commission may adopt any rules necessary to effect the provisions of this section, and may charge a reasonable fee to applicants for the costs incurred in compliance with this subdivision."

SECTION 3. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.25. Exemption from permit requirement.**

Law enforcement officers and qualified retired law enforcement officers authorized by federal law to carry a concealed handgun pursuant to section 926B or 926C of Title 18 of the United States Code, who are in compliance with the requirements of those sections, are exempt from obtaining the permit described in G.S. 14-415.11."

SECTION 4. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.26. Certification of qualified retired law enforcement officers.**

(a) In lieu of obtaining a permit under this Article, a qualified retired law enforcement officer may apply to the North Carolina Criminal Justice Education and Training Standards Commission for certification. The application shall include all of the following:

(1) Verification of completion of the firearms qualification criteria established by the Commission.

(2) Photographic identification indicating retirement status issued by the agency from which the applicant retired from service.

(3) Any other application information required by the Commission.

(b) The Commission shall include with the certification a notice of the limitations applicable under federal or State law to the concealed carry of firearms in this State. The failure to receive a notification under this subsection shall not be a defense to any offense or violation of applicable State or federal laws.

(c) The Commission shall not incur any civil or criminal liability as the result of the performance of its duties under this section.

(d) It shall be unlawful for an applicant, or any person assisting an applicant, to make a willful and intentional misrepresentation on any form or application submitted to the Commission. A violation of this subsection shall be a Class 2 misdemeanor, and shall result in the immediate revocation of any certification issued by the Commission. A person convicted under this subsection shall be ineligible for certification under this section, or from obtaining a concealed carry permit under State law."

SECTION 5. G.S. 14-415.12(b)(8) reads as rewritten:

"**§ 14-415.12. Criteria to qualify for the issuance of a permit.**

(b) The sheriff shall deny a permit to an applicant who:

...

(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of

a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, ~~or 14-415.21(b).~~14-415.21(b), or 14-415.26(d)."

SECTION 6. Section 2 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

Title Change

H D

HOUSE BILL 1231

Committee Substitute Favorable 5/22/07

Committee Substitute #2 Favorable 6/5/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1231-PCS70596-RK-50

Short Title: Certain Law Officers/Waive Handgun Permit. (Public)

Sponsors:

Referred to:

March 29, 2007

A BILL TO BE ENTITLED

AN ACT TO WAIVE THE REQUIREMENT TO OBTAIN A CONCEALED HANDGUN PERMIT TO CARRY A CONCEALED HANDGUN FOR CERTAIN PERSONS AUTHORIZED BY FEDERAL LAW TO CARRY CONCEALED HANDGUNS AND FOR CERTAIN FEDERAL AND STATE RETIRED LAW ENFORCEMENT OFFICERS, AND TO EXEMPT ARMED ARMORED CAR SERVICE GUARDS AND ARMED SECURITY GUARDS WHILE PERFORMING DUTIES FROM PROHIBITIONS ON CARRYING WEAPONS ON CERTAIN EDUCATIONAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.10 is amended by adding a new subdivision to read:

"(6) Qualified retired law enforcement officer. – An individual who meets all of the following qualifications:

a. Retired in good standing from service with a public agency located in the United States as a law enforcement officer, other than for reasons of mental instability.

b. Prior to retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of, any person for any violation of law, and had statutory powers of arrest.

c. Prior to retirement, was regularly employed as a law enforcement officer for a total of 15 years or more, or retired after completing probationary periods of service due to a service-connected disability, as determined by the agency.

d. Has a vested right to benefits under the retirement plan of the agency."

SECTION 2. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(16) Establish standards and guidelines for the annual firearms certification of qualified retired law enforcement officers, as defined in G.S. 14-415.10(6), to efficiently implement the provisions of G.S. 14-415.25. The standards shall provide for the courses, qualifications, and the issuance of the annual firearms qualification certification. The Commission may adopt any rules necessary to effect the provisions of this section, and may charge a reasonable fee to applicants for the costs incurred in compliance with this subdivision."

SECTION 3. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-415.25. Exemption from permit requirement.

Law enforcement officers and qualified retired law enforcement officers authorized by federal law to carry a concealed handgun pursuant to section 926B or 926C of Title 18 of the United States Code, who are in compliance with the requirements of those sections, are exempt from obtaining the permit described in G.S. 14-415.11."

SECTION 4. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-415.26. Certification of qualified retired law enforcement officers.

(a) In lieu of obtaining a permit under this Article, a qualified retired law enforcement officer may apply to the North Carolina Criminal Justice Education and Training Standards Commission for certification. The application shall include all of the following:

(1) Verification of completion of the firearms qualification criteria established by the Commission.

(2) Photographic identification indicating retirement status issued by the agency from which the applicant retired from service.

(3) Any other application information required by the Commission.

(b) The Commission shall include with the certification a notice of the limitations applicable under federal or State law to the concealed carry of firearms in this State. The failure to receive a notification under this subsection shall not be a defense to any offense or violation of applicable State or federal laws.

(c) The Commission shall not incur any civil or criminal liability as the result of the performance of its duties under this section.

(d) It shall be unlawful for an applicant, or any person assisting an applicant, to make a willful and intentional misrepresentation on any form or application submitted to the Commission. A violation of this subsection shall be a Class 2 misdemeanor, and shall result in the immediate revocation of any certification issued by the Commission. A person convicted under this subsection shall be ineligible for certification under this section, or from obtaining a concealed carry permit under State law.

(e) This section shall not exempt any individual engaged in the private protective services profession in this State from fulfilling the registration and training requirements in Chapter 74C of the General Statutes."

SECTION 5. G.S. 14-415.12(b)(8) reads as rewritten:

"**§ 14-415.12. Criteria to qualify for the issuance of a permit.**

(b) The sheriff shall deny a permit to an applicant who:

...

(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, ~~or 14-415.21(b).~~14-415.21(b), or 14-415.26(d)."

SECTION 6. G.S. 14-269.2(g) reads as rewritten:

"(g) This section shall not apply ~~to:~~to any of the following:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school ~~authority;~~authority.

(1a) A person exempted by the provisions of G.S. ~~14-269(b);~~14-269(b).

(2) Firefighters, emergency service personnel, and North Carolina Forest Service personnel, and any private police employed by ~~an educational institution,~~ a school, when acting in the discharge of their official ~~duties;~~duties.

(3) Home schools as defined in G.S. ~~115C-563(a); or~~115C-563(a).

(4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.

(5) A person registered under Chapter 74C of the General Statutes as an armed armored car service guard or an armed courier service guard when acting in the discharge of the guard's duties and with the permission of the college or university.

(6) A person registered under Chapter 74C of the General Statutes as an armed security guard while on the premises of a hospital or health care facility located on educational property when acting in the discharge of the guard's duties with the permission of the college or university."

SECTION 7. Sections 2, 6, and 7 of this act are effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 1231:
Certain Law Officers/Waive Handgun Permit

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Finance	**Date:**	July 16, 2007
Introduced by:	Reps. Gibson, Daughtridge	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	PCS to Third Edition H1231-CSRK		

SUMMARY: : House Bill 1231 waives the concealed handgun permit requirement for certain persons authorized by federal law to carry concealed handguns and for certain federal and state retired law enforcement officers.

CURRENT LAW: Section 926B and 926C of Title 18 of the U.S. Code authorize current law enforcement officers and certain retired law enforcement officers to carry a concealed weapon without a concealed carry permit. The federal law requires that certain criteria be met, and that the officers be able to provide certain types of identification indicating that the officer or retired officer meets the criteria.

NC does not currently have a process for retired law enforcement officers to obtain the identification required by federal law.

BILL ANALYSIS:

Section 1 of the bill defines the term "Qualified retired law enforcement officer."

Section 2 gives the North Carolina Criminal Justice Education and Training Standards Commission the responsibility and authority to establish the necessary standards and guidelines to certify and recertify qualified retired law enforcement officers to carry concealed pursuant to federal law and to adopt rules and charge a reasonable fee.

Section 3 provides that law enforcement officers and qualified retired law enforcement officers, who are authorized to carry a concealed handgun pursuant to federal law, may do so in NC without obtaining a concealed carry permit if they are in compliance with the requirements of the federal law.

Section 4 provides that a qualified retired law enforcement officer may apply to the Commission for certification to meet the criteria of the federal law instead of applying for a concealed carry permit. The new statute requires the Commission to notify the person of the limitations applicable under federal or State law, but failure to receive such a notification is not a defense to a violation of federal or State laws.

Any person applying or assisting an applicant that makes a willful and intentional misrepresentation shall be guilty of a Class 2 misdemeanor, any certification that has been issued will be revoked, and the person will be ineligible to receive a concealed carry permit.

The proposed committee substitute adds subsection (e) to the bill.

Section 5 amends the prohibitions for obtaining a concealed carry permit to include conviction of providing false information on an application for certification.

EFFECTIVE DATE: Section 2 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Summary contribution by Susan Sitze, Staff Attorney.

H1231e3-SMRK-CSRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 976

Committee Substitute Favorable 4/19/07
Committee Substitute #2 Favorable 5/21/07

Short Title: Public Vehicular Areas Defined. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF PUBLIC VEHICULAR AREA IN MOTOR VEHICLE LAW AND TO REQUIRE ACCESS TO GATED COMMUNITIES FOR EMERGENCY SERVICE VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(32) 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:

...

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.

2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.

3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this

definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road used by vehicular traffic within or leading to a subdivision, whether or not the subdivision roads have been offered for dedication to the public.

d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

e. The area is a road used by vehicular traffic within or leading to a gated subdivision, whether or not the subdivision roads have been offered for dedication to the public."

SECTION 2. Part 10 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-158.3. Emergency entry to controlled access roads.**

Any person, association, or other legal entity having responsibility for a controlled access system on a road that is a public vehicular area shall provide a means of immediate access to all emergency service vehicles, which shall include law enforcement, fire, rescue, ambulance, and first responder vehicles."

SECTION 3. This act becomes effective December 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H D

HOUSE BILL 976
Committee Substitute Favorable 4/19/07
Committee Substitute #2 Favorable 5/21/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H976-PCS60389-RK-58

Short Title: Public Vehicular Areas Defined. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF PUBLIC VEHICULAR AREA IN MOTOR VEHICLE LAW AND TO REQUIRE ACCESS TO GATED COMMUNITIES FOR EMERGENCY SERVICE VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(32) 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:

...

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.

2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.

3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public.

d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4."

SECTION 2. Part 10 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-158.3. Emergency entry to controlled access roads.**

Any person, association, or other legal entity having responsibility for a controlled access system on a road that is a public vehicular area shall provide a means of immediate access to all emergency service vehicles, which shall include law enforcement, fire, rescue, ambulance, and first responder vehicles. This section shall not apply to any entity where federal regulations and requirements on its activities preempt application of State regulations or requirements."

SECTION 3. This act becomes effective December 1, 2007.

HOUSE BILL 976: Public Vehicular Areas Defined

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 16, 2007
Introduced by:	Rep. Boylan	**Summary by:**	Hal Pell
Version:	PCS to Third Edition		Committee Co-Counsel

SUMMARY: ***House Bill 976 changes the definition of "public vehicular area" in the motor vehicle law of the State to include roads within or leading to gated subdivisions or communities, and requires persons responsible for the controlled access systems at gated subdivisions or communities to provide a means of access for all emergency service vehicles. This act becomes effective December 1, 2007.***

CURRENT LAW: Current law does not include roads within gated subdivisions or communities as a part of the definition of "public vehicular areas." There is currently no requirement that gated subdivisions or communities provide access for emergency vehicles.

BILL ANALYSIS:

Section 1: House Bill 976 changes the definition of "public vehicular area" to include roads within or leading to gated communities. Several motor vehicle laws apply in public vehicular areas, including laws concerning DWI, reckless driving, speeding at a rate greater than is reasonable and prudent under the conditions, turn signals, and passing a stopped school bus.

Section 2: The bill requires any person responsible for a controlled access system on a road that is a public vehicular area to provide a means of access to all emergency service vehicles, including law enforcement, fire, rescue, ambulance, and first responder vehicles. Violation of this provision would constitute an infraction pursuant to G.S. 20-176, with a penalty of not more than $100.00. The section would not apply to facilities controlled by federal regulations, such as nuclear power plants.

EFFECTIVE DATE: This act becomes effective December 1, 2007.

Giles Perry, Counsel to the House Transportation Committee, and Steve Rose, Counsel to House Judiciary Committee I, substantially contributed to this summary.

H0976e3-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1079*

Short Title:	Protections for Victims of Human Trafficking.	(Public)
Sponsors:	Senators Kinnaird; Berger of Franklin and Cowell.	
Referred to:	Judiciary I (Civil).	

March 22, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING PROTECTIONS FOR, AND CIVIL REMEDIES TO, VICTIMS OF HUMAN TRAFFICKING.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 15D.**

"**Victims of Human Trafficking.**

"**§ 15D-1. Definitions.**

The following definitions apply in this Chapter:

(1) Contractor. – The contractor provided for in G.S. 15D-4(c).

(2) Local service provider. – The legal entities at the regional, city, or county level that offer benefits and services to trafficked persons or possible trafficking victims.

(3) Minor. – A person under the age of 18 years.

(4) Possible trafficking victim. – A person whose case is being reviewed pursuant to G.S. 15D-2(c).

(5) Services. – Those services provided to trafficked persons, possible trafficking victims, family members of trafficked persons, or family members of possible trafficking victims. The provision of services shall not be contingent on the trafficked person's immigration status or on the prosecution of the trafficking victim's trafficker.

(6) T visa. – The nonimmigrant visa available to certain victims of human trafficking under section 101(a)(15)(T) of the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq.

(7) 'Trafficked person' or 'trafficking victim'. – A person certified by the Attorney General pursuant to G.S. 15D-2(c). In the case of a trafficked person who is a minor, an incompetent, incapacitated, or deceased, the legal guardian of the trafficked person or a representative of the

trafficked person's estate, another family member, next friend, or any other person appointed as suitable by the court may assume the trafficked person's rights, but in no event shall a defendant be named such representative or guardian.

(8) U visa. – The nonimmigrant visa available to certain victims of human trafficking under section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq.

(9) VTVPA. – The Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386, as amended.

"§ 15D-2. State certification of trafficked persons; services available to trafficked persons.

(a) Eligibility for Benefits and Services. – Notwithstanding any local or State law limiting the ability of an alien to access State or local benefits or services, an alien who is a trafficked person shall be eligible for benefits and services under any State or local program or activity funded or administered by any official or agency described in subsection (b) of this section.

(b) Requirement to Expand Benefits and Services. – Subject to the State certification requirement under subsection (c) of this section, and in the case of a non-entitlement program subject to the availability of funds, local service providers, the Secretary of Health and Human Services, the Commissioner of Labor, the Attorney General, and the heads of each State agency, department, and institution shall provide benefits and services to trafficked persons in North Carolina. Services shall be provided without regard to the immigration status of the trafficked persons or the ability or willingness of the trafficked person to participate in the investigation or prosecution of his or her trafficker. Benefits extended under this section shall not exceed benefits available to eligible North Carolina citizens.

(c) State Certification of Eligibility for Trafficked Persons. – Any State law enforcement officer who identifies the presence, within the State, of a person whom the officer suspects has been subjected to any of the practices set forth in G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13, shall notify the Attorney General of the person's presence as soon as practicable. Within 96 hours of receiving this notification, the Attorney General shall review and evaluate the case of the person, including any attendant crime report, and issue a letter of certification of eligibility or other relevant document entitling the person to have access to State benefits and services.

"§ 15D-3. Protections for possible trafficking victims.

(a) A possible trafficking victim shall not be detained in facilities inappropriate to the trafficking victim's status as a crime victim.

(b) A possible trafficking victim shall be provided law enforcement protection if the person's safety is at risk or if there is a danger of harm by recapture of the possible trafficking victim by a trafficker. Protection shall include all of the following:

(1) Taking measures to protect the possible trafficking victim and the possible trafficking victim's family members from intimidation, threats of reprisals, and reprisals from traffickers or their associates.

(2) Ensuring that the names and identifying information of the possible trafficking victim and the possible trafficking victim's family members are not disclosed to the public.

(c) Where appropriate, the contractor shall seek civil remedies, including application for temporary restraining orders and protective orders, while protecting possible trafficking victims, witnesses, the family members of possible trafficking victims, or the family members of witnesses.

"**§ 15D-4. Protections and benefits for trafficking victims.**

(a) Trafficking victims shall not be detained in facilities inappropriate to their status as crime victims.

(b) Trafficked persons, prosecution witnesses, the families of trafficked persons, and the families of prosecution witnesses shall be protected from intimidation and retaliation by traffickers and their associates. Protection shall include:

(1) Access to centers for victim and witness assistance.

(2) Protection under the Address Confidentiality Program under Chapter 15C of the General Statutes.

(c) The Attorney General shall contract with Legal Aid of North Carolina, Inc., which, under the terms of the contract, shall be required to do all of the following:

(1) Provide the information set forth in subsection (e) of this section to trafficked persons.

(2) Provide the legal services set forth in subsection (f) of this section and G.S. 15D-3(c) to trafficked persons.

(3) Train relevant State and local law enforcement agencies pursuant to G.S. 15D-8(b).

(4) Report to the Office of the Attorney General as required by G.S. 15D-9(a).

(5) Provide the services set forth in G.S. 15D-10(a) and G.S. 15C-10.

(d) As soon as practicable after certification of a trafficked person pursuant to G.S. 15D-2(c), the Attorney General shall notify the contractor of the certification and shall provide the contractor with all information in the Attorney General's possession concerning the name and location of the trafficked person.

(e) As soon as practicable after notification by the Attorney General that a person has been certified as a trafficking victim, the contractor shall locate the trafficked person and provide the trafficked person with information about his or her rights and applicable services, including all of the following:

(1) Availability of pro bono and low-cost legal services. This information shall include a list of pro bono organizations that have informed the contractor in writing that they are willing to assist victims of trafficking.

(2) Right to access:

a. Federal and State benefits and services, such as regularized immigration status.

b. Benefits and services under the VTVPA.

c. State compensation, assistance, education, and training programs.

(3) Names of and contact information for relevant local service providers offering services to victims of trafficking and, when relevant, to domestic violence and rape crisis centers.

(4) The availability of federal and State protections for victims, witnesses, and their families faced with threats and intimidation.

(5) Legal remedies available, including compensation in civil proceedings and restitution pursuant to G.S. 15A-834.

(6) Right to confidentiality pursuant to G.S. 15D-4(b)(2).

(7) Right to receive notices about the status of the case against the trafficker, pursuant to Article 46 of Chapter 15A of the Gen Statutes.

(8) Right to access translation services and an oral interpreter if the trafficked person cannot communicate fully in English and where these resources are available.

(f) The contractor may assist trafficked persons in obtaining a T visa, U visa, or the temporary immigration status known as 'continued presence' under the VTVPA. This assistance shall include preparing and submitting the necessary written requests to law enforcement officers pursuant to G.S. 15D-6.

"**§ 15D-5. Sheltering of human trafficking victims and possible human trafficking victims; reimbursement of domestic violence programs.**

(a) The contractor may contract with domestic violence shelters or faith-based agencies to provide shelter for human trafficking victims or possible human trafficking victims. Funds appropriated to the contractor pursuant to this subsection shall only be used to pay the cost of sheltering trafficking victims or possible trafficking victims.

(b) Any domestic violence program or faith-based agency that shelters a trafficking victim or a possible trafficking victim may apply for reimbursement of the costs of sheltering the trafficking victim or possible trafficking victim. The contractor shall reimburse a domestic violence program that applies for reimbursement under this subsection if the program reasonably believed that the person sheltered was a trafficking victim or a possible trafficking victim.

(c) To the extent possible, trafficking victims and possible trafficking victims shall be sheltered at locations designed to provide the following basic services to them:

(1) Shelter operating 24 hours a day, seven days a week.

(2) A switchboard for crisis calls operating 24 hours a day, seven days a week.

(3) Temporary housing and food facilities.

(4) Psychological support and peer counseling.

(5) Referrals to existing services in the community and follow-up on the outcome of the referrals.

(6) Emergency transportation to the shelter and, when appropriate, arrangements with local law enforcement for assistance in providing such transportation.

"**§ 15D-6. Assisting trafficked persons to secure immigration status and federal benefits.**

To ensure that trafficking victims are able to access all available federal benefits and programs for victims of a severe form of trafficking under the VTVPA, State law enforcement officials shall do all of the following:

(1) Keep federal authorities informed about trafficking cases in the State.

(2) Within 72 hours of determining that, more likely than not, an immigrant was a victim of trafficking, and upon the written request from the trafficked person or the person's legal representative, submit a written request to the appropriate federal authorities requesting that the trafficking victim be granted the temporary immigration status known as "continued presence" under the VTVPA.

(3) Within 72 hours of a written request for documentation from a person identified by local or State authorities as someone who had, more likely than not, been a victim of trafficking or a written request from his or her legal representative, provide the person with a completed Form Supplement B to Form I-914, or equivalent for a U visa, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons that satisfies the Law Enforcement Agency (LEA) Endorsement regulations in 8 C.F.R. § 214.11(f)(1) in support of the person's application for a T visa or a U visa.

(4) Within 72 hours of a request for documentation from a person identified by local or State authorities as someone who had, more likely than not, been a victim of trafficking, or a written request from the person's legal representative, provide the person with documents in support of the person's request for benefits and services authorized by the VTVPA to be provided to trafficking victims by the Office of Refugee Resettlement in the Department of Health and Human Services.

"**§ 15D-7. Non-referral to immigration for removal or deportation.**

No State or local official shall transmit, in any form, any information identifying, in any way, the name or location of a trafficked person to federal immigration officials responsible for removal or deportation of undocumented aliens, except as otherwise required by law.

"**§ 15D-8. Protocols for State law enforcement officers; training to identify and protect trafficking victims.**

(a) The North Carolina Justice Academy shall establish protocols and training for State law enforcement agency officers to assist trafficked persons in accessing nonimmigrant status and federal benefits, including mechanisms for coordinating with the federal officials to ensure that trafficked persons are able to access their rights under federal law.

(b) The contractor shall make training available in all relevant local and State agencies, including health care, hospital, law enforcement, labor, agriculture, housing, and social services, to teach officials:

(1) About the phenomenon of human trafficking, State and federal laws on human trafficking, the rights and needs of trafficked persons, and the tools necessary to provide effective services to trafficked persons.
(2) How to recognize and identify victims of one or more of the practices set forth in G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13.
(3) Methods for protecting trafficking victims, and possible trafficking victims, and advising them of their rights.
(4) Procedures and techniques for handling specialized needs of victims who may face cultural, language, and other barriers that impede ability to request and obtain available services.

"**§ 15D-9. Annual report; data collection.**

(a) The contractor shall, on or before June 30 of each year, submit a report to the Office of the Attorney General covering the preceding fiscal year and stating the number, if any, of otherwise eligible applicants who did not receive T visas, or who were unable to adjust their status under 8 U.S.C. § 1255(l), solely on account of the unavailability of visas due to the limitation imposed by 8 U.S.C. § 1184(o)(2) or 8 U.S.C. § 1255(l)(4)(A).

(b) The Office of the Attorney General shall collect data on trafficking cases, including:

(1) The number of cases investigated.
(2) The number of prosecutions under Article 10A of Chapter 14 of the General Statutes.
(3) The number of convictions under Article 10A of Chapter 14 of the General Statutes and the number of plea bargains.
(4) The age, sex, and nationality of the trafficking victims and defendants in all cases prosecuted.

"**§ 15D-10. Resource center; liaison to United States Department of Justice.**

(a) The contractor shall develop and disseminate throughout the State information and materials concerning human trafficking, including, but not limited to, a procedures manual on the identification and prevention of human trafficking. The contractor shall also establish a resource center for the collection, retention, and distribution of educational materials related to human trafficking. This information and material shall be developed consistent with the availability of funds from the federal government for human trafficking prevention and education.

(b) The Attorney General shall establish a liaison with the United States Department of Justice in order to harmonize the State's response to human trafficking with the federal government's response to trafficking. This liaison shall:

(1) Facilitate the legal processes over which the federal government has sole authority, including those processes through which overseas family members of trafficked persons can receive protection from the United States government.
(2) Advise the Attorney General of all federal funding that may be available for implementing the various elements of the State's

responses to human trafficking, with particular attention to shelter funding.

(3) Endeavor, in conjunction with nongovernmental organizations, to secure federal documents enabling trafficked persons to have access to federal benefits and services.

"**§ 15D-11. Civil action.**

(a) A trafficked person may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff shall also be awarded attorneys' fees and costs. Treble damages shall be awarded on proof of actual damage where the defendant's acts are willful and malicious.

(b) An action brought pursuant to this section shall be commenced within 10 years of the date on which the trafficked person was freed from the trafficking situation, or if the trafficked person was a minor when the act occurred, within 15 years after the date the plaintiff attains the age of 18. All of the following shall suspend the running of the statute:

(1) Disability shall toll or suspend the running of the statute. If a person entitled to sue is under a 'disability' at the time the cause of action accrues, such that it is impossible or impracticable for the person to bring an action, the time during which the plaintiff is under a disability tolls the running of the time limit for the commencement of the action. Disability includes: insanity, imprisonment, or other incapacity or incompetence.

(2) The statute shall not run against an incompetent or minor plaintiff simply because a guardian ad litem has been appointed. In the event that a minor plaintiff is under a disability, the failure of the minor's guardian ad litem to bring a plaintiff's action within the applicable limitation period will not prejudice the plaintiff's right to do so after his or her disability ceases.

(3) Estoppel. – A defendant is estopped from asserting a defense of the statute of limitations when the expiration of the statute is due to:

a. Conduct by the defendant inducing the plaintiff to delay the filing of the action, or preventing the plaintiff from filing the action; or

b. Threats made by the defendant that caused duress upon the plaintiff.

(4) The suspension of the statute of limitations due to disability or estoppel applies to all other related claims arising out of the trafficking situation.

(c) For purposes of this section, a 'criminal action' includes investigation and prosecution and remains pending until final adjudication in the trial court.

(d) Any legal guardian, family member, representative of the trafficked person, or court appointee may represent the trafficked person's rights, in the event the

trafficked person is deceased or otherwise unable to represent his or her own interests in court."

SECTION 2. G.S. 15A-830(a)(7) reads as rewritten:

"(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[illegible]; 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; [illegible]; 14-43.3; 14-43.11(b); 14-43.12(b); 14-43.13(b); 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.

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 3. G.S. 15C-1 reads as rewritten:

"**§ 15C-1. Purpose.**

The purpose of this Chapter is to enable the State and the agencies of North Carolina to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual offense, ~~or stalking~~ stalking, or human trafficking; to enable interagency cooperation in providing address confidentiality for victims of domestic violence, sexual offense, ~~or stalking~~ stalking, or human trafficking; and to enable the State and its agencies to accept a program participant's use of an address designated by the Office of the Attorney General as a substitute address."

SECTION 4. G.S. 15C-2 reads as rewritten:

"**§ 15C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Actual address or address. – A residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter.

(2) Address Confidentiality Program or Program. – A program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, ~~or stalking~~ stalking, or human trafficking to prevent the victim's assailants or potential assailants from finding the victim through public records.

(3) Agency of North Carolina or agency. – Includes every elected or appointed State or local public office, public officer, or official; institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any local government; or unit, special district, or other political subdivision of State or local government.

(4) Application assistant. – An employee of an agency or nonprofit organization who provides counseling, referral, shelter, or other specialized services to victims of domestic violence, sexual offense, ~~or stalking~~ stalking, or human trafficking and who has been designated by the Attorney General to assist individuals with applications to participate in the Address Confidentiality Program.

(5) Attorney General. – Office of the Attorney General.

(6) Person. – Any individual, corporation, limited liability company, partnership, trust, estate, or other association or any state, the United States, or any subdivision thereof.

(7) Program participant. – An individual accepted into the Address Confidentiality Program in accordance with this Chapter.

(8) Public record. – A public record as defined in Chapter 132 of the General Statutes.

(9) Substitute address. – An address designated by the Attorney General under the Address Confidentiality Program.

(10) Victim of domestic violence. – An individual against whom domestic violence, as described in G.S. 50B-1, has been committed.

(10A) Victim of human trafficking. – A person subjected to the practices set forth in G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13.

(11) Victim of a sexual offense. – An individual against whom a sexual offense, as described in Article 7A of Chapter 14 of the General Statutes, has been committed.

(12) Victim of stalking. – An individual against whom stalking, as described in G.S. 14-277.3, has been committed."

SECTION 5. G.S. 15C-3 reads as rewritten:

"**§ 15C-3. Address Confidentiality Program.**

The General Assembly establishes the Address Confidentiality Program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, ~~or stalking~~ stalking, or human trafficking to prevent the victim's assailants or potential assailants from finding the victim through public records. Under this Program, the Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of process and receiving and forwarding first-class mail or certified or registered mail. The Attorney General shall not be required to forward any mail other than first-class mail or certified or registered mail to the program participant. The Attorney General shall not be required to track or otherwise maintain records of any

mail received on behalf of a program participant unless the mail is certified or registered mail."

SECTION 6. Subsection (c) of G.S. 15C-4 reads as rewritten:

"(c) The application shall contain all of the following:

(1) A statement by the applicant that the applicant is a victim of domestic violence, sexual offense, ~~or stalking~~ stalking, or human trafficking and that the applicant fears for the applicant's safety or the safety of the applicant's child.

(2) Evidence that the applicant is a victim of domestic violence, sexual offense, ~~or stalking.~~stalking, or human trafficking. This evidence may include any of the following:

a. Law enforcement, court, or other federal or state agency records or files.

b. Documentation from a domestic violence program if the applicant is alleged to be a victim of domestic violence.

c. Documentation from a religious, medical, or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

d. Documentation submitted to support a victim of hu trafficking's application for T or U nonimmigrant statu pursuant to the Victims of Trafficking and Violence Protection Act of 2000, as amended.

(3) A statement by the applicant that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's child.

(4) A statement by the applicant that the applicant has or will confidentially relocate in North Carolina.

(5) A designation of the Attorney General as an agent for the applicant for purposes of service of process and the receipt of first-class mail or certified or registered mail.

(6) The mailing address and telephone number where the applicant can be contacted by the Attorney General.

(7) The address that the applicant requests not to be disclosed by the Attorney General that directly relates to the increased risk of domestic violence, sexual offense, ~~or stalking.~~stalking, or human trafficking.

(8) A statement as to whether there is any existing court order or court action involving the applicant related to divorce proceedings, child support, child custody, or child visitation and the court that issued the order or has jurisdiction over the action.

(9) A statement by the applicant that to the best of the applicant's knowledge, the information contained in the application is true.

(10) A recommendation of an application assistant that the applicant have an address designated by the Attorney General to serve as the substitute address of the applicant."

SECTION 7. G.S. 15C-10 reads as rewritten:

"**§ 15C-10. Assistance for program applicants.**

The Attorney General shall designate agencies of North Carolina and nonprofit organizations that provide counseling and shelter services to victims of domestic violence, sexual offense, or stalking to assist individuals applying to be program participants. Any assistance and counseling rendered by the Office of the Attorney General or its designee to applicants shall in no way be construed as legal advice. The contractor provided for in G.S. 15D-4(c) shall designate agencies of North Carolina and nonprofit organizations that provide counseling and shelter services to victims of human trafficking to assist individuals applying to be program participants."

SECTION 8. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.14. Trafficking victim counselor privilege.**

(a) As used in this section, a "trafficking victim counselor" means any of the following:

(1) A person who is engaged in any office, hospital, institution, or center whose primary purpose is the rendering of advice or assistance to victims of human trafficking and who meets one of the following requirements:

a. Is a psychotherapist as defined in G.S. 90-21.41; has a masters degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of human trafficking victims.

b. Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under subdivision (1)a. of this subsection. The training, supervised by a person qualified under subdivision (1)a. of this subsection shall include the following areas: history of human trafficking, civil and criminal law as it relates to human trafficking, societal attitudes towards human trafficking, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of human trafficking victims, and referral services available to human trafficking victims.

(2) A person who is employed by any organization providing programs, whether financially compensated or not, for the purpose of counseling and assisting human trafficking victims, and who meets one of the following requirements:

a. Is a psychotherapist as defined in G.S. 90-21.41; has a masters degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.

b. Has the minimum training for counseling of human trafficking victims as required by guidelines established by the employing

agency and is supervised by an individual who qualifies as a counselor under subdivision (2)a. of this subsection. The training, supervised by a person qualified under subdivision (2)a. of this subsection, shall include the following areas: law, victimology, counseling techniques, client and system advocacy, and referral services.

(b) Privileged Communications. – No trafficking victim counselor shall be required to disclose any information that the counselor acquired during the provision of services to a victim and which information was necessary to enable the counselor to render the services; provided, however, that this subsection shall not apply where the victim waives the privilege conferred. Any resident or presiding judge in the district in which the action is pending shall compel disclosure, either at the trial or prior thereto, if the court finds, by a preponderance of the evidence, a good faith, specific, and reasonable basis for believing that (i) the records or testimony sought contain information that is relevant and material to factual issues to be determined in a civil proceeding, or is relevant, material, and exculpatory upon the issue of guilt, degree of guilt, or sentencing in a criminal proceeding for the offense charged or any lesser included offense, (ii) the evidence is not sought merely for character impeachment purposes, and (iii) the evidence sought is not merely cumulative of other evidence or information available or already obtained by the party seeking the disclosure or the party's counsel. If the case is in district court, the judge shall be a district court judge, and if the case is in superior court, the judge shall be a superior court judge.

Before requiring production of records, the court must find that the party seeking disclosure has made a sufficient showing that the records are likely to contain information subject to disclosure under this subsection. If the court finds a sufficient showing has been made, the court shall order that the records be produced for the court under seal, shall examine the records in camera, and may allow disclosure of those portions of the records which the court finds contain information subject to disclosure under this subsection. After all appeals in the action have been exhausted, any records received by the court under seal shall be returned to the center, unless otherwise ordered by the court. The privilege afforded under this subsection terminates upon the death of the victim.

(c) Duty in Case of Abuse or Neglect. – Nothing in this section shall be construed to relieve any person of any duty pertaining to abuse or neglect of a child or disabled adult as required by law."

SECTION 9. There is appropriated from the General Fund to the Office of the Attorney General of the Department of Justice the sum of eight hundred thousand dollars ($800,000) for the 2007-2008 fiscal year and the sum of eight hundred thousand dollars ($800,000) for the 2008-2009 fiscal year. Of the amount appropriated in this act, seven hundred thousand dollars ($700,000) shall be allocated to contract with Legal Aid of North Carolina, Inc., a nonprofit organization, as required under this act and one hundred thousand dollars ($100,000) shall be allocated to implement the remainder of this act.

SECTION 10. This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 1079*
PROPOSED COMMITTEE SUBSTITUTE S1079-CSRK-60 [v.2]

7/19/2007 9:11:51 AM

Short Title: Protections for Victims of Human Trafficking. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING PROTECTIONS FOR VICTIMS OF HUMAN TRAFFICKING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-43.11 reads as rewritten:

"**§ 14-43.11. Human trafficking.**

(a) A person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.

(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(d) A person who is not a legal resident of North Carolina, and would consequently be ineligible for State benefits or services, shall be entitled to the benefits and services of any State agency if the person is a victim of an offense charged under this section."

SECTION 2. G.S. 15A-830(7) reads as rewritten:

"(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; ~~14-43.6;~~

14-43.3; 14-43.11; 14-190.17; 14-190.19; 14-202.1; 14-277.3; 14-288.9; or 20-138.5.

. . . ."

SECTION 3. G.S. 15A-832 is amended by adding a new subsection to read:

"**§ 15A-832. Responsibilities of the district attorney's office.**

. . .

(h) When a person is a victim of a human trafficking offense, and is entitled to benefits and services pursuant to G.S. 14-43.11(d), the district attorney's office shall so notify the Office of the Attorney General and Legal Aid of North Carolina, Inc., in addition to providing services under this Article."

SECTION 4. G.S. 15C-1 reads as rewritten:

"**§ 15C-1. Purpose.**

The purpose of this Chapter is to enable the State and the agencies of North Carolina to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual offense, ~~or stalking;~~ stalking, or human trafficking; to enable interagency cooperation in providing address confidentiality for victims of domestic violence, sexual offense, ~~or stalking;~~ stalking, or human trafficking; and to enable the State and its agencies to accept a program participant's use of an address designated by the Office of the Attorney General as a substitute address."

SECTION 5. G.S. 15C-2 reads as rewritten:

"**§ 15C-2. Definitions.**

The following definitions apply in this Chapter:

. . .

(4) Application assistant. – An employee of an agency or nonprofit organization who provides counseling, referral, shelter, or other specialized services to victims of domestic violence, sexual offense, ~~or stalking~~ stalking or human trafficking and who has been designated by the Attorney General to assist individuals with applications to participate in the Address Confidentiality Program.

. . .

(10) Victim of domestic violence. – An individual against whom domestic violence, as described in G.S. 50B-1, has been committed.

(11) Victim of a sexual offense. – An individual against whom a sexual offense, as described in Article 7A of Chapter 14 of the General Statutes, has been committed.

(12) Victim of stalking. – An individual against whom stalking, as described in G.S. 14-277.3, has been committed.

(13) Victim of human trafficking – An individual against whom human trafficking, as described in G.S. 14-43.11, has been committed."

SECTION 6. G. S. 15C-3 reads as rewritten:

"**§ 15C-3. Address Confidentiality Program.**

The General Assembly establishes the Address Confidentiality Program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, ~~or stalking~~ stalking, or human trafficking to

prevent the victim's assailants or potential assailants from finding the victim through public records. Under this Program, the Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of process and receiving and forwarding first-class mail or certified or registered mail. The Attorney General shall not be required to forward any mail other than first-class mail or certified or registered mail to the program participant. The Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered mail."

SECTION 7. G.S. 15C-4(c) reads as rewritten:

"(c) The application shall contain all of the following:

(1) A statement by the applicant that the applicant is a victim of domestic violence, sexual offense, ~~or stalking~~ stalking or human trafficking and that the applicant fears for the applicant's safety or the safety of the applicant's child.

(2) Evidence that the applicant is a victim of domestic violence, sexual offense, ~~or stalking.~~ stalking or human trafficking. This evidence may include any of the following:

a. Law enforcement, court, or other federal or state agency records or files.

b. Documentation from a domestic violence program if the applicant is alleged to be a victim of domestic violence.

c. Documentation from a religious, medical, or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

d. Documentation submitted to support a victim of human trafficking's application for federal assistance or benefits under federal human trafficking laws.

. . . ."

SECTION 8. G.S. 15C-10 reads as rewritten:

"**§ 15C-10. Assistance for program applicants.**

(a) The Attorney General shall designate agencies of North Carolina and nonprofit organizations that provide counseling and shelter services to victims of domestic violence, sexual offense, ~~or stalking~~ stalking or human trafficking to assist individuals applying to be program participants. Any assistance and counseling rendered by the Office of the Attorney General or its designee to applicants shall in no way be construed as legal advice."

(b) The Attorney General, upon receiving notification pursuant to 15A-832(h), shall, within 96 hours of receiving the notification, issue the victim a letter of certification of eligibility or other relevant document entitling the person to have access to State benefits and services."

SECTION 9. G.S. 7A-474.2(1) reads as rewritten:

"(1) "Eligible client" means a resident of North Carolina financially eligible for representation under the Legal Services Corporation Act,

regulations, and interpretations adopted thereunder (45 CFR § 1611, and subsequent ~~revisions).~~revisions), or a person entitled to State benefits or services pursuant to G.S. 14-43.11(d)."

SECTION 10. G.S. 7A-474.3(b) reads as rewritten:

"(b) Eligible Cases. Legal assistance shall be provided to eligible clients under this Article only in the following types of cases:

(1) Family violence or spouse abuse;

(2) Assistance for the disabled in obtaining federal Social Security benefits;

(2a) Assistance for eligible clients in obtaining benefits or assistance under any federal law or program providing benefits or assistance for human trafficking victims.

. . . ."

SECTION 11. The North Carolina Justice Academy shall establish protocols suitable for the training of State and local law enforcement officers. The protocols shall be made available to all State and local law enforcement agencies, so that the agencies may conduct training on:

(1) The phenomenon of human trafficking, and State and federal laws on human trafficking.

(2) How to recognize and identify victims of one or more of the practices set forth in G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13.

(3) Methods for protecting trafficking victims, and possible trafficking victims, and advising them of their rights.

(4) Procedures and techniques for handling specialized needs of victims who may face cultural, language, and other barriers that impede ability to request and obtain available services.

Nothing in this section shall be construed to require the North Carolina Justice Academy to conduct training of State or local law enforcement officers.

SECTION 12. There is appropriated from the General Fund to Legal Aid of North Carolina, Inc., the sum of fifty thousand ($50,000) in non-recurring funds for the 2007-2008 fiscal year to provide legal assistance to human trafficking victims.

SECTION 13. This section is effective when the act becomes law. Section 12 is effective July 1, 2007, and the remainder of the act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1079:
Protections for Victims of Human Trafficking

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 18, 2007
Introduced by:	Sen. Kinnaird	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	PCS to First Edition S1079-CSRK		

SUMMARY: ***This bill would amend the State human trafficking law to allow any victim to obtain benefits under the Crime Victims Rights Act, and authorizes Legal Aid of North Carolina to assist the victim in obtaining any available federal assistance. The act is effective for offenses occurring on or after December 1, 2007.***

[As introduced, this bill was identical to H974, as introduced by Reps. Alexander, Glazier, which is currently in House Judiciary II .]

BACKGROUND:[1]

The Victims of Trafficking and Violence Protection Act of 2000 defines "severe forms of trafficking in persons" as follows:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age, OR
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The federal government estimates that approximately 800,000 people are trafficked across international borders each year; about 14,500-17,500 of them into the United States. Based on estimates by the U.S. government of the numbers of all trafficking victims and comparing those figures with widely cited figures of foreign-born children in the sex trade in the United States, it has been estimated that about 1/3 of foreign-born trafficking victims are children. Examples of recent cases of human trafficking in the U.S. include adolescent Mexican girls trafficked to the U.S. for prostitution, Indian men trafficked for forced labor, and African women and children trafficked for domestic servitude.

USCCB/MRS administers two anti-trafficking programs in partnership with the Department of Health & Human Service, Office of Refugee Resettlement.

In January of 2003, USCCB/MRS and Lutheran Immigration and Refugee Service (LIRS) received funding from ORR to implement the Trafficked Child Placement and Technical Assistance Program. Both USCCB/MRS and LIRS place children with specialized Unaccompanied Refugee Minor (URM) programs, in which licensed child welfare agencies provide foster care, in a family, small group, or independent living setting, for certain unaccompanied minors, including trafficked children. Through these programs, trafficked children are able to receive culturally and linguistically appropriate care, including mental health services, intensive case management, and education.

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[1]From *United States Conference of Catholic Bishops/Migration and Refugee Services, USCCB/MRS. (http://www.usccb.org/mrs/traffickingweb2.shtml)*

USCCB/MRS and LIRS also conduct technical assistance and training for URM programs and service providers with trafficked children in their care, and work to expand the capacity of the URM programs to provide specialized services to trafficked children.

Most recently, USCCB/MRS contracted with DHHS/ORR to provide services to survivors of trafficking in the United States and U.S. territories. This National Services Contract for Victims of Human Trafficking allows USCCB/MRS to subcontract with local organizations to provide comprehensive case management services to adults and pre-eligible children who are survivors of human trafficking, as defined in the Trafficking Victims Protection Act of 2000. USCCB/MRS provides coordination, training, per capita funding, and monitoring to subcontractors, and partners with Project REACH and Catholic Legal Immigration Network, Inc. (CLINIC) to provide technical assistance to the subcontractors serving human trafficking survivors.

BILL ANALYSIS:

Section 1: Provides that persons who are not legal residents of the State would be authorized to receive State benefits and services if they are human trafficking victims.

Section 2: Makes human trafficking victims eligible under the Crime Victims Rights Act.

Section 3: Requires the district attorney to notify the Office of the Attorney General, and Legal Aid of North Carolina, when a human trafficking victim qualifies under section 1 of the act.

Sections 4 through 7: Amends the Attorney General's Address Confidentiality Program (ACP) to include human trafficking victims; makes conforming changes in the ACP statutes.

Section 8: Makes a conforming change to the ACP, and directs the Attorney General to issue a letter of certification of eligibility, or like document, to a human trafficking victim when notified by a district attorney that the person is authorized by law to receive State benefits and services.

Section 9: Amends the statutes that provide for legal aid and assistance by Legal Aid of North Carolina to include human trafficking victims as eligible clients.

Section 10: Amends the statute describing eligible case for legal aid; authorizes legal aid to assist human trafficking victims in obtaining federal benefits and services.

Section 11: Requires the North Carolina Justice Academy to establish training protocols, and make them available to all State and local law enforcement agencies. The protocols would include training on the phenomenon of human trafficking, the recognition and protection of victims, and providing information on benefits and services.

Section 12: Authorizes an appropriation (non-recurring) of $50,000 to Legal Aid of North Carolina, Inc., for the 2007-2008 fiscal year, for legal assistance to trafficking victims.

EFFECTIVE DATE: The appropriation is effective July 1, 2007, and the remainder is effective December 1, 2007, and for offenses occurring on or after that date.

S1079e1-SMRK-CSRK

TRAFFICKING VICTIMS PROTECTION ACT
FACT SHEET

In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) (Public Law 106-386) was enacted. Prior to that, no comprehensive Federal law existed to protect victims of trafficking or to prosecute their traffickers.

Human trafficking is increasingly committed by organized, sophisticated criminal groups, and is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the U.S. and worldwide.

TVPA Goals

- Prevent human trafficking overseas
- Protect victims and help them rebuild their lives in the U.S. with Federal and state support
- Prosecute traffickers of persons under stiff Federal penalties

Prevention, Protection and Prosecution

The law is comprehensive in addressing the various ways of combating trafficking, including prevention, protection and prosecution. The **prevention** measures include the authorization of educational and public awareness programs.

Protection and assistance for victims of trafficking under the law include making housing, educational, health care, job training and other Federally-funded social service programs available to assist victims in rebuilding their lives. The law also established the **T visa**, which allows victims of trafficking to become temporary residents of the U.S. The TVPA authorizes up to 5,000 victims of trafficking each year to receive permanent residence status after three years from issuance of their temporary residency visas. The T visa signifies a shift in the immigration law policy, which previously resulted in many victims being deported as illegal aliens. The law also makes victims of trafficking eligible for the Witness Protection Program.

The law makes victims of trafficking eligible for **benefits and services** under Federal or state programs once they become **certified** by the U.S. Department of Health and Human Services (HHS). Adult trafficking victims must be certified as a pre-condition for their eligibility for benefits and services. Once certified, they will be eligible to apply for benefits and services under any Federal or state funded programs, to the same extent as refugees including refugee cash, medical assistance and social services. Victims under the age of 18 do not need to be certified. HHS issues these victims letters of eligibility so that providers know they are eligible for services and benefits.

Victims of human trafficking who are non-U.S. citizens are eligible to receive benefits and services through the TVPA to the same extent as refugees. Victims who are U.S. citizens do not need to be certified by HHS to receive benefits; as U.S. citizens, they are already eligible for many benefits.

The TVPA also created new law enforcement tools to strengthen the **prosecution and punishment** of traffickers, making human trafficking a Federal crime with severe penalties, up to and including life in prison under certain circumstances.

Moreover, the law addresses the subtle means of coercion used by traffickers to bind their victims in to servitude, including: psychological coercion, trickery, and the seizure of documents, activities which were difficult to prosecute under preexisting involuntary servitude statutes and case law.

National Human Trafficking Resource Center 1.888.3737.888

Trafficking Victims Protection Reauthorization Act of 2003

In 2003, the Bush Administration authorized more than $200 million to combat human trafficking through the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 (Public Law 108-193). The TVPRA of 2003 enhanced the prevention of human trafficking, protections for trafficking victims and the prosecution of trafficking related crimes.

The TVPRA provides resources and initiatives to assist the 14,500 - 17,500 victims of human trafficking who are trafficked into the United States every year. For example, it augments the legal tools which can be used against traffickers by empowering victims to bring Federal civil suits against traffickers for actual and punitive damages, and by including sex trafficking and forced labor as offenses under the Racketeering Influenced and Corrupt Organization statute. It also encourages the nation's 21,000 state and local law enforcement agencies to participate in the detection and investigation of human trafficking cases.

The U.S. Department of Health and Human Services has a significant role in implementing the law's victim-centered, compassionate approach to finding and aiding the victims of this modern-day slave trade. The TVPRA further supported these efforts by eliminating the requirement that a victim of trafficking between the ages of 15 and 18 must cooperate with the investigation and prosecution of his or her trafficker in order to be eligible for a T-visa and allowed benefits and services available to victim of trafficking be available for their family members legally entitled to join them in the U.S.

Trafficking Victims Protection Reauthorization Act of 2005

The fight against human trafficking was further enhanced, and additional funding authorized by the Bush Administration, with the signing of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005. HHS was given several specific responsibilities in the TVPRA of 2005 including:

- Establishing a residential treatment facilities pilot program in the U.S. for juveniles subjected to trafficking.
- Working in cooperation with the U.S. Attorney General to conduct an annual conference in FY 2006, 2007 and 2008 addressing the issue of trafficking by reviewing research and best methods with Federal, state and local officials, as well as medical personnel, social service providers, non-governmental organizations, academics and victims themselves.
- Issuing grants to establish, develop, expand and strengthen assistance programs for U.S. citizens or aliens admitted for permanent residence who are the subject of sex trafficking or severe forms of trafficking in persons that occurs, in whole or in part, within the territorial jurisdiction of the U.S.

If you think you have come in contact with a victim of human trafficking, call the toll-free **National Human Trafficking Resource Center at 1.888.3737.888**. This hotline will help you determine if you have encountered victims of human trafficking, will identify local resources available in your community to help victims, and will help you coordinate with local social service organizations to help protect and serve victims to begin the process of restoring their lives. For more information on human trafficking visit **www.acf.hhs.gov/trafficking**.

HHS: Rescue and Restore National Coalition Members

as of April 6, 2007

American Center for Law & Justice
American Conservative Union
American Immigration Lawyers Association
American Values
American-Arab Anti-Discrimination Committee
Arab American Institute
Assemblies of God Charities
Association of Jewish Family and Children's Agencies
Beverly LaHaye Institute
Bill of Rights Institute
Boat People SOS
Boys and Girls Town USA
Break the Chain Campaign
Catholic Charities USA
Catholic Family and Human Rights Institute
Catholic Health Association
Catholic Legal Immigration Network, Inc.
Center for Advancement of Human Rights
Christian Coalition
[redacted]stian Medical Association
Coalition Against Trafficking in Women
Commonwealth Catholic Charities
Covenant House
Culture of Life Foundation and Institute
Ethiopian Community Development Council
Evangelicals for Social Action
Faith Consortium
FaithAction International House
Family Research Council
Focus on the Family
General Board of Church and Society of the United Methodist Church
Hebrew Immigrant Aid Society
International Catholic Migration Commission
Justice for Children International
Leadership Conference of Women Religious
Lutheran Immigration and Refugee Service
Mexican American Legal Defense and Education Fund
National Alliance of Vietnamese American Service Agencies
[redacted]onal Asian Pacific American Legal Consortium
National Catholic Rural Life Conference
National Center for Missing & Exploited Children
National Coalition for Haitian Rights
National Coalition of Latino Clergy & Christian Leaders
National Congress of Vietnamese Americans
National Consumers League
National Council of La Raza
National Immigration Forum
National Immigration Law Center
New Horizon Family Center
Organization of Chinese Americans
Polaris Project
Prism Magazine
Private Sector Initiatives Foundation, Inc.
Project REACH, The Trauma Center
Protection Project, Johns Hopkins University, Paul H. Nitze School of Advanced International Studies
RAINN, the Rape, Abuse & Incest National Network
Religious Freedom Coalition
Restoration Ministries International
Salvation Army
Service Employees International Union (SEIU)
Seventh-day Adventist Church Inter-American Division
Sex Industry Survivors
Shared Hope International
Shirlington Education and Employment Center
Sisters of the Good Shepherd Province of Mid-North America
Southeast Asia Resource Action Center
Tibet House U.S.
USCCB - Migration and Refugee Services
Victims of Trafficking Assistance Program
World Relief
YMCA International

HHS: Rescue and Restore Coalition Member List

as of April 6, 2007

Atlanta

Advocates for Bartow County's Children, INC
Alcove House
Aligarh Association
Alliance Against Human Trafficking
Archdiocese of Atlanta
Asian / Pacific-American Council of GA, Inc.
Asociacion LatinoAmericana
Atlanta Police Department
Boat People SOS - Atlanta Branch Office
BrasilAtlanta
Caminar Latino, Inc.
Catholic Social Services of Atlanta
Center for Pan Asian Community Services, Inc.
Children's Organization of Southeast Asia
Coastal Area Rape Crisis Center, Inc.
Concerned Women for America of GA
Coordinating Council of Latino Community Leaders in Atlanta
Covenant House Georgia
Dia de la Mujer Latina, Inc.
Dialogo Latino, Inc.
Episcopal Diocese of Atlanta
Farmworker Division of GA Legal Services Program
Georgia Campaign for Adolescent Pregnancy Prevention
Georgia Department of Human Resources
Georgia Mutual Assistance Association Consortium
Georgia Somali Community, Inc.
Georgians for Health Care
Good Shepherd Presbyterian Church
Good Shepherd Services
Greenbriar Children's Center
Gwinnett Children's Shelter, Inc.
Highland House
International Center of Atlanta
International Women's House, Inc.
Investigation of Fraud Latino
Irish Chamber of Commerce
Jobs with Justice
Juvenile Justice Fund
Keenan's Kids Foundation
Latino Community Advocate
LifeLink Network for Children, Inc.
LUCC
Men Stopping Violence
National Association of Chinese-Americans, Atlanta Chapter
National Coalition for the Protection of Children & Families
Nepalese Assn in SE America
North Avenue Presbyterian Church
North Central Georgia Law Enforcement Academy
Nuestro Semanario
Open Arms, INC
Park Place Outreach
Peachtree Charter Middle School
Rainbow House, INC
Raksha, Inc.
Refugee Family Services
Refugee Women's Network, Inc.
Rio de Janeiro Sister Cities Committee
Southeast Asia Children Projects
Tapestri, Inc.
Transitional Living Program-Open Arms, INC
U.S. Department of Health and Human Services Administration for Children and Families
Ukrainian National Women's League, Atlanta Branch
United Way of Metropolitan Atlanta
Vietnamese Professional Society
West Chase Apartments
Women Watch Afrika, Inc.
Young Adult Guidance Center

Houston

#21 USW Local 13-2001
American Jewish Committee-Houston Chapter
Archdiocese of Galveston-Houston
Artists Against Human Trafficking
Asian American Family Services
Association for Residency and Citizenship of America
Boat People-SOS of Houston
Catholic Charities of the Archdiocese of Galveston-Houston
Christus Health Gulf Coast
Concerned Women For America-Texas, South
Congregation of the Sisters of Charity of the Incarnate Word
Dominican Sisters
Federacion de Imigrantes y Trabajadores Unidos
Fifth Ward Enrichment Program, Inc.
Harris County AFL-CIO Council
HESP Local 6315
HFT 2415
Houston Interfaith Worker Justice
ILA Local 2421351
Ironworkers Local 84
Maryknoll Fars and Brors
Saving Lives Through Alternate Options
Sex Industry Survivors - Houston
Worklife Institute
YMCA International of Greater Houston

Illinois

Agape Missions
Asian American Alliance
Big Brothers Big Sisters of Metropolitan Chicago
Bosnian & American Community Center
Catholic Charities, Effingham, Illinois
Chestnut Heath Systems
Chicago Chinatown Chamber of Commerce
Chicago Coalition for the Homeless
Chicago Foundation for Women
Chicago Read Mental Health Center
Chicago Ridge Youth Service Bureau
Chicago Workers' Collaborative
Chicago Youth Centers
Chinese American Service League
Community Counseling Center of Chicago
Counseling on The Fox, Inc.
Delta Center, Inc.
Department of Human Services/HCD Region II
DHS/HCD Region II
Elgin Police Department
Embarrass River Basin Agency, Inc.
Family Shelter Service
Federal Bureau of Investigation
First United Methodist Church
Ford-Iroquois Public Health Department
Freedom House
Greene County Health Department
Healthcare Alternative Systems, Inc.
Heartland Alliance, Midwest Immigrant & Human Rights Center
Hebrew Immigrant Aid Society of Chicago
Illinois Department of Human Services-Austin Family Community Resource Center
Illinois Department of Human Services-Western Local Office
Illinois Association of Hispanic State Employees
Illinois Caucus for Adolescent Health
Illinois Center for Violence Prevention
Illinois Coalition Against Sexual Assault
Illinois Coalition for Immigrant and Refugee Rights
Illinois Collaboration on Youth
Illinois Department of Children and Family Services
Illinois Department of Health and Human Services
Illinois Department of Human Services - Family Planning
Illinois Department of Public Health
Illinois Migrant Council
Illinois Public Health Association
Illinois Sheriffs' Association
Illinois State Police
Illinois Violence Prevention Authority
Immigration Project
Instituto del Progreso Latino
Interfaith Refugee and Immigration Ministries
Jo Daviess County Health Department
Justice Network, Institute of the Blessed Virgin Mary
Knox County Area Project
LA VOZ LATINA Hispanic Resource Development Center
Latino Social Workers Organization
Latinos Unido Ninos Especiales
Lazarus House
Life Span
Macoupin County Public Health Department
Malia Artisan Imports, Inc
McHenry County Youth Service Bureau
MCV (Men Challenging Violence)
Meadows Community Center
Midwest Immigrant & Human Rights Center
Morning Star Mission Ministries, Inc.
Mujeres Latinas en Accion
Outreach Community Ministries
PAVE (People Against Violent Environment)
Project IRENE
Regional Institute for Community Policing
Salvation Army of Metropolitan Chicago
Sangamom County Association for Home & Community Education
Sangamon County Community Resources
Sarah's Inn
Sargent Shriver National Center on Poverty Law
Sex Industry Survivors-Chicago
Sisters of St. Joseph of La Grange
Souast Youth Service Board
Southwest Women Working Together
Springfield Community Federation

State of Illinois Department of Human Services-McLean County Family Community Resource Center
Stephenson County Health Department
U.S. Attorney's Office, Southern District of Illinois
Vietnamese Association of Illinois
[redacted] Blankets Orphan Care, International
[redacted] (Working Against Violent Environments)
[redacted]n Illinois Regional Council - Community Action Agency
Woodlawn FCRC
World Relief - Moline
YWCA Evanston/Northshore
YWCA of Freeport Illinois
YWCA of the Sauk Valley

Las Vegas

African Community Center
African Immigrant Ministry
Canyon Ridge Christian Church
Center for Independent Living
Central Christian Church of Henderson, NV
Children's Cabinet
Clark County (Nevada) Manager
Clark County Health District
Clark County Social Service Department
Community Initiatives Group, Inc.
Courtney Children's Foundation
Eagle Quest of Nevada, Inc.
EOB Community Action Partnership
Family and Child Treatment of Southern Nevada
Family Resource Centers of Northeastern Nevada
Foster Care & Adoption Association of Nevada
Girls and Boys Town Nevada
Goshen Community Development Coalition
HELP of Southern Nevada
Jewish Family Services of Las Vegas
Las Vegas Rescue Mission
Las Vegas West Family Resource Center - Boys and Girls Club
Lutheran Social Services of Nevada
Neighborhood Justice Center
Nevada Child Seekers
Nevada Coalition Against Sexual Violence
Nevada Partners, Culinary Training Academy
Nevada Partnership for Homeless Youth
Nevada Treatment Center
Phoenix Homes, Inc.
Raising Nevada
[redacted]Crisis Center
[redacted]od Family Resource Center
[redacted]Mountain Resource Center
SAFE House
Safe Nest: Temporary Assistance for Domestic Crisis, Inc.
Salvation Army, Clark County Administration
Servicios Hispanos de Nevada
Sharron Angle, Nevada State Assembly Woman
STAR Counseling/Consultant LLC
Strengthening America's Communities
We Care Ministries
WestCare Nevada
Women's Development Center

Long Island

Anti-Human Trafficking Task Force of Long Island
Brighter Tomorrows
Catholic Charities, Diocese of Rockville Centre, NY
Circulo de la Hispanidad, INC
Health and Welfare Council of Long Island
Long Island Council of Churches
Nassau County Coalition Against Domestic Violence
Nassau County Police Department
Safe Horizon
Salvation Army-Street Outreach
Suffolk County Coalition Against Domestic Violence
Tiny Stars
U.S. Department of Labor-Wage and Hour Division
Victims Information Bureau of Suffolk

Los Angeles

African Community Resource Center
Alexandria House
American Civil Liberties Union of Southern California
Amnesty International
Anti-Human Trafficking Project
APAIT-Asian Pacific AIDS Intervention Team
Armenian Evangelical Social Service Center
Asian Pacific American Legal Center
Associate RSC
[redacted]y Bishop of Los Angeles, San Gabriel Region
[redacted]l Safety Corridor Coalition
[redacted]p Alemany High School
Bureau of Engineering
Bureau of Sanitation
Bureau of Street Lighting
Bureau of Street Services
Captive Daughters
CAST
Catholic Charities of Los Angeles
Catholic Daughters Amerkas
Cedars Cultural and Educational Foundation
Center for Human Rights and Constitutional Law
Center for the Pacific Asian Family
Central American Resource Center
Choices for Sober Living
City of Los Angeles Community Development Department
City of Los Angeles Human Relations Commission
Coalition for Humane Immigrant Rights of Los Angeles
Comision Femenil San Francisco Valley
Commission for Children, Youth and Their Families
Communications
Crisis House, Inc.
CSP, Victim Assistance Programs
Department of Animal Services
Department of Building and Safety
Department of Neighborhood Empowerment
Department of Water and Power
Dominican Sisters of Mission San Jose
Downtown Women's Center
East Los Angeles Women's Center
El Pueblo de Los Angeles
Feminist Majority Foundation
Foothill Unity Center
GABRIELA Network
GET ON THE BUS
Higher Goals INC
Holy Trinity Social Justice Ministry
Information Technology Agency
Inner City Law Center
Institute for the Study and Prevention of Hate Crimes
Interfaith Coalition for Immigrant Rights
Interfaith Council Against Slavery and Trafficking
International Institute of Los Angeles
Jovenes, Inc./Our Lady of Angels Catholic Church
Justice and Peace Office, Archdiocese of Los Angeles
LA Commission on Assaults Against Women
Legal Aid Foundation of Los Angeles
Los Angeles City Commission on the Status of Women
Los Angeles Commission on Assaults Against Women
Los Angeles Convention Center
Los Angeles County Interbranch Council of the American Association of University Women
Los Angeles Department of Aging
Los Angeles Department of Public Works
Los Angeles Department of Transportation
Los Angeles Fire Department
Los Angeles Planning Department
Los Angeles Public Library
Marist Missionary Sisters
Mary Magdalene Project
Marybrall Sisters
Missionaries of Charity Brothers
Mount St. Mary's College
NAACP of Los Angeles
National Korean American Service and Education Consortium
Neighborhood Legal Services of L.A. County
Orange County Human Trafficking Task Force
Orange County Trafficking Partnership-The Cambodian Family
Pacific Institute for Women's Health
Padre Serra Parish Camarillo
PICO Union Housing Center
Pilipino Worker Center of Southern California
Polaris Project, UCLA Chapter
Program for Torture Victims
Rape Treatment Center
Religious of the Sacred Heart of Mary
Religious Sisters of Charity
Saddleback Justice Task Force
Salvation Army of Los Angeles
San Diego County Commission on the Status of Women
San Pedro Catholic Workers
SCC
Sex Industry Survivors-Los Angeles
Sisters of Notre Dame
Sisters of St Joseph-Carondelet
Sisters of St. Joseph-Los Angeles
Sisters of St. Joseph-San Fernando
Sisters of St. Louis
Sisters of the Divine Savior Anti-Human Trafficking Project
Sisters of the Good Shepherd
Sisters of the Holy Names of Jesus and Mary
South Asian Network
Tidings Catholic Newspaper
Tiny Stars
UCLA Downtown Labor Center
United Nations Association
United States International Mission
Valley Family Center
Ventura County Commission on the Status of Women
Western Diocese of the Armenian Church of North America

Women at Work
Women's Commission-San Bernadino
Women's Federation for World Peace
WTLC
Zoe Children's Homes

Milwaukee

Advocates of Ozaukee
Ambassadors Place
Archdiocese of Milwaukee
Arms Around Amani Neighborhood Assn
Aurora Health Care (AHC) - Interpreter Service Department
BASICS in Milwaukee, Inc.
Believers In Christ Ministries, Inc
Burleigh Street Community Development Corp
Casa Romero Renewal Center
Catholic Charities of the Archdiocese of Milwaukee, Inc.
Catholics for Peace and Justice
Christ Tabernacle Child-care
Columbia St. Mary's
Community Advocates
Community Crusaders
Community Enterprises of Greater Milwaukee
Community Village Social Service, Inc.
Congregation of Sisters of St. Agnes, UNANIMA International
Cooperative for democratic Organizing
Covenant Healthcare
Cross Trainers Youth Ministries of the MRM
Early View Academy
El Shaddai Church of God In Christ
Franciscan Peacemakers
Greater Milwaukee Foundation
Guiding Light Youth
Heartland Alliance
Hickman's Academy of Excellence
Hill Connections
Holy Redeemer Institutional Church of God in Christ
HOPE Network
Interfaith Conference of Greater Milwaukee
Islamic Family & Social Services, Inc.
Jesus Wants to Help
Jewish Family Services of Milwaukee
Joy House - Milwaukee Rescue Mission
Latino Arts, Inc.
Lemonade Stand
Lighthouse Clinic
Medical College of WI-Family Strengthening Program for Immigrants
MetCalfe Park Resident's Association
Milwaukee Catalyst
Milwaukee Christian Center
Milwaukee District Office of the US Equal Employment Opportunity Commission
Milwaukee Police Department
Milwaukee Rescue Mission
Milwaukee Women's Center, Inc.
New Hope Church of God In Christ
NorthWest Side Community Development Corporation
Pathways Counseling Center
Pentecostal Tabernacle COGIC, Inc.
Positive Plus Images, Inc.
S.E.T. Ministry
Safe Harbor, Milwaukee Rescue Mission
Salvation Army of Greater Milwaukee
School Sisters of Notre Dame - Milwaukee Province
Sex Industry Survivors - Milwaukee
Sexual Assault Treatment Center, Aurora Sinai Medical Center
Sisters of St. Francis of Assisi
Sisters of the Divine Savior
Sojourner Truth House
Solution Group, Inc.
St. Martin de Porres Catholic Church
St. Timothy Baptist Church
Task Force on Family Violence, Inc.
Tikkun Ha-lr of Milwaukee
True Rock Church of God in Christ Congregation
Upper Room COGIC
Women's Center
Zonta Club of Milwaukee

Minneapolis/St. Paul

African and American Friendship Association for Cooperation & Development Inc.
Battered Women's Legal Advocacy Project
Breaking Free
Catholic Charities of St. Paul and Minneapolis
Center for Victims of Torture
Chicano/Latino Affairs Council - State of Minnesota
Civil Society
Council on Asian-Pacific Minnesotans
Council on Black Minnesotans
Domestic Abuse Project
Family & Children Service - Minnesota
Global Citizens Network
Greater Minneapolis Council of Churches
Harding High School
Hennepin County Medical Center
Hennepin County Office of Mulit-Cultural Services
Here's Life Inner City - Twin Cities
Hmong American Mutual Assistance Association, Inc.
International Teams
Kids Aid USA
Lutheran Social Service of Minnesota
Minneapolis Foundation
Minnesota Indian Women's Resource Center
People Serving People, Inc.
Public Policy Solutions
RCCG, Restoration Chapel
Refugee Health Program of Minnesota Department of Health
Salvation Army - Northern Division
Sex Industry Survivors-Minneapolis/St. Paul
Soroptimist International of Greater Minneapolis
Southeast Asian Refugee Community Home
Stop It Now! Minnesota
Twin Cities Workers Center - University of Minnesota
University of Minnesota Deborah E. Powell Center for Women's Health
Urban Communities Association of Minneapolis
Volunteers of America - Minnesota
WATCH
Women's Initiative for Self Empowerment, Inc.
Women's UN Report Network
YWCA of Minneapolis

Nashville

Child and Family Tennessee
HomeSafe of Sumner, Wilson and Robertson Counties – Inc.
Department of Human Services
Free for Life Ministries
Frontier Health
Legal Aid of Middle TN
Madison Street United Methodist Church
Metropolitan Government of Nashville and Davidson County
Metropolitan Social Services
Oasis Center
Rape and Sexual Abuse Center
Salvation Army, Nashville
Somali Community Center of Nashville
Siloam Family Health Center
Tennessee Coalition Against Domestic & Sexual Violence
United Neighborhood Health Services
World Relief Nashville

Newark

Bergen County Rape Crisis Center, YWCA
Camden County Women's Center
Catholic Charities, Diocese of Camden, Cumberland County Family Services
Communities of Faith for Housing - Hoboken Shelter
Department of Community Affairs, Division on Women
Family Service Bureau of Newark
Good Counsel
Help & Reconciliation Ministry and Bible Training College
Hispanic Information Center of Passaic, Inc.
International Institute of New Jersey
Jersey City Family Health Center
Lutheran Social Ministries of New Jersey
Monmouth University, Division of Social Work
NCC Hispanic Development Corporation
New Jersey Coalition Against Sexual Assault
Organization of Chinese Americans
Regional Business Partnership
Roman Catholic Archdiocese of Newark
Rural Opportunities Inc.
Safe House
Sex Industry Survivors-Newark
Shelter Our Sisters
Sisters of Saint Dominic of Caldwell
Women's Health & Counseling Center

North Carolina

Caring for Children
Catholic Social Services Diocese of Charlotte-Host Homes
Coastal Horizons Center, INC (Crisis Intervention Services)
Haven House Services
Hillcrest Youth Shelter
Legal Aid of North Carolina
North Carolina Coalition Against Sexual Assault
Race Against Evil
Runaway and Homeless Youth Shelter Network/Mountain Youth Resources
With Friends, INC

Philadelphia

Anti-Violence Partnership of Philadelphia
Asociacion de Puertorriquenos en Marcha, Inc.
Augustinian Friars
Boat People SOS - Philadelphia Branch Office
Congreso de Latinos Unidos
Council of Spanish Speaking Organizations (Concilio)
Friends of Farmworkers, Inc.
Good Shepherd Sisters

HIAS & Council Migration Service of Philadelphia
Immigration & Refugee Services - Catholic Social Services of Philadelphia
Korean Community Development Services Center
McAuley Convent
Nationalities Service Center
[redacted]lvania Immigration and Citizenship Coalition
[redacted]on Army - Eastern PA and DE Division
[redacted]omas Aquinas Rectory
Turkish American Multicultural Family Services, Inc.
Urban Family Council of Philadelphia / NYC

Phoenix

Alma Vision Phoenix Hispanic Network
Arizona Alliance for Community and Faith Based Action
Arizona Children's Association
Arizona Governor's Office for Children, Youth & Families DFW
Arizona Interfaith Movement
Arizona Latino Commission
Arizona League to End Regional Trafficking
Arizona Opportunities Industrialization Center
Arizona Refugee Resettlement Program
Arizonans for the Protection of Exploited Children and Adults
Catholic Social Service of Central and Northern AZ
Central Arizona Shelter Services
Child Protection Project
City of Phoenix Prosecutor's Office
Collaboration for a New Century
Community Development Coalition of AZ
Concilio Latino de Salud, Inc.
Help 4 Kidz
Justice for Children - Arizona Chapter
Life Transitions Academy
Maricopa County Public Health Department
Pan de Vida Foundation
Phoenix Rescue Mission
Rehoboth PEACE CDC
Rock Church
Salvation Army - Southwest Divisional HQ

Portland

Access and Reception Center
Asian Family Center
Catholic Charities of Portland
Clackamas Women's Services
Ecumenical Ministries of Oregon
[redacted]s Free, Volunteers of America - Oregon
[redacted]ant and Refugee Community Organization
[redacted]Youth Programs
LOTUS - Liberating Ourselves Through Understanding Sexploitation
Lutheran Community Services Northwest
Salvation Army Cascade Division (Portland)
Sex Industry Survivors - Eugene
Sex Industry Survivors - Portland
Survivors' Empowerment and Advocacy Project
The Honorable Mary Gallegos, Former Oregon State Representative

St. Louis

Accion Social Comunitaria
African Mutual Assistance Association of Missouri
African Refugee and Immigrant Services
ARCHS
Catholic Charities of Southern Illinois
Catholic Charities Refugee Services
Catholic Family Services
Catholic Family Services - Hispanic Programs
Catholic Family Services, LAMP
Catholic Family Services, the Vietnamese Center
City of St. Louis Department of Health
City of St. Louis Department of Human Services
Congregation of the Sisters of the Most Precious of O'Fallon, MO
Covenant House Missouri
Crime Victim Advocacy Center of St. Louis
Division of Health-City of St. Louis
Family Health Care Centers
Franciscan Sisters of Mary
Grace Hill Neighborhood Health Centers
Human Development Corporation
Immigration Project
International Institute of St. Louis
Jewish Family & Children's Service
La Clinica-Latino Community Health Centers
Life Crisis Services
Lutheran Family and Children's Services of Missouri
Myrtle Hilliard Davis Comprehensive Health Centers
National Farm Worker Ministry
[redacted]Martha's Hall
[redacted]on Army Midland Division
[redacted]l Sisters of Notre Dame of St. Louis
Sex Industry Survivors Anonymous-St. Louis
Sisters of St. Joseph of Carondelet, St. Louis Province
Sparkill Dominican Sisters
St. John's Mercy Medical Center
St. Louis Christian Chinese Community Service Center
St. Louis Lead Prevention Coalition
St. Louis Regional Health Commission
Urban League of Metropolitan St. Louis
Women's Safe House
Youth In Need
YWCA - St. Louis Regional Sexual Assault Center

San Francisco

Arriba Juntos
Asian Perinatal Advocates
Catholic Charities CYO, San Francisco
Chinese Newcomers Service Center
Gum Moon Residence
Homeless Prenatal Program
La Casa de Las Madres
La Raza Centro Legal
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Maitri
Mexico Solidarity Network (Red de Solidaridad con Mexico)
Mujeres Unidas y Activas
Next Door Solutions to Domestic Violence
Northern California Council for the Community
Oakland Police Department
Oshun Center
Riley Center of St. Vincent De Paul Society
Sage's Trafficking Opposition Program
San Francisco Police Department
Sisters of Mercy
Sisters of St. Joseph-San Francisco
Survivors International
Women, Inc.

Seattle

Archdiocesan Housing Authority
Asian Pacific Islander Women and Family Safety Center
Catholic Community Services of Western Washington
Central Washington Comprehensive Mental Health
Chinese Information and Service Center
Consejo Counseling and Referral Service
Diocese of Olympia, Refugee Resettlement Office
Diocese of Yakima
Foundation for Healing Trauma
Global Women in Action
International Rescue Committee Seattle
Lutheran Community Services Northwest
Lutheran Immigration and Refugee Service - Seattle
New Horizons Ministries
Northwest Justice Project
Refugee and Immigrant Family Center
Refugee Women's Alliance
Salvation Army Norwest Division
Sex Industry Survivors - Seattle
Somali Community Services of Seattle
State of Washington Office of Crime Victims Advocacy
Washington State Department of Health, Migrant Farmworker Housing
World Relief Seattle

Tampa

ACTS
Alpha House of Tampa
Bay Area Legal Services
Beth-El Farmwork Ministry, Inc
Catholic Charities of Orlando, Inc.
Catholic Charities of Tampa
Catholic Charities, Diocese of St. Petersburg, Inc.
Children's Board
Citris County School Board
Community Unitarian Universalist Church
Court Appointed Special Advocates, St. Petersburg
Creative Beginnings, Inc.
Crisis Center of Tampa Bay
Florida Hospital
Florida Kinship Center
Florida League of United Latin American Citizens - Central Florida
Friends of the Library
Gulf Coast Community Care - Homeless Shelter
Gulf Coast Jewish Family Services, Inc.
Gulfcoast Legal Services
Haitian Educational Development Organization, Inc.
Harbor House, Orange County Center Against Domestic Violence
Hills County Neighborhood Relations
Hispanic American Coalition
Hispanic Foundations Incorporated
Hispanic Services Council
Homeless Coalition of Hillsborough County, Inc.
Immigrant Rights Advocacy Center
James A Haley Veterans Hospital
Jewish Family Services of Greater Orlando
Latino Coalition of Tampa Bay
Legal Aid Society of the Orange County Bar Association, Inc.
Lutheran Services Florida - Orlando
Lutheran Services Florida, Inc. - Tampa
Mary & Martha House, Inc.

Mental Health Association of Central Florida, Inc.
Mental Health Care, Inc.
Metropolitan Ministries
Mission Unity, Inc.
New Life Church, New Beginnings of Tampa
PALMAS Refugee Program
Pasco County Community Services Department
Pasco County Health Department
Pinellas County Sheriff's Office
Rural Social Services Partnership
Salvation Army - Tampa
San Antonio Boys Village
School District of Hillsborough County
St. John Learning Center
St. Petersburg International Folk Fair Society, Inc.
Tampa Community Health Center
University of Southern Florida
University of Southern Florida, College of Medicine
World Relief Tampa
YWCA of Tampa Bay

Miscellaneous

ACT Corporation
Albuquerque U.S. Attorney's Office
Anchorage Children's Home of Bay County, FL, INC
Arnette House INC
Boston Women's Hospital
Brighton Center
Buckhorn Children and Family Services
Butler County Rape Crisis Program
Cambodian Family
Capital City Youth Services
Carolinas Institute for Community Policing
Catholic Charities, Archdiocese of San Antonio, Inc.
Catholic Charities, Diocese of Jackson
Catholic Charities, INC-Jackson, MS
Catholic Relief Services - Diocese of Venice
Child and Family Tennessee
Children's Aid Society
Children's Home Society of the Treasure Coast
Children's Home Society of West Palm Beach
City of Fairfax
College of Wooster
Collier County Sheriff's Office/Human Trafficking Unit
Congregation of Notre Dame
Corner Drug Store, INC
Crosswinds Youth Services, INC
DBPR State of Florida
DOD Law Enforcement Policy and Support
El Paso FBI Field Office
Esperanza: The Farmworker Women's Legal Initiative
Family Connection, INC
Family Resources
Family Services Alliance
Family Services Alliance
Florida Coalition Against Human Trafficking
Florida Keys Children's Shelter
Florida Network of Youth and Family Services
Freedom House
Friends of Suffering Humanity
Frontier Health
Future Teachers/Leaders of America
Haven Domestic Violence Center
Hawaii Anti-Trafficking Task Force Globalization Research Center: University of Hawaii-Manoa
Heartland Human Relations and Fair Housing Association
Homestead Police Department Project SOS
Human Trafficking Awareness Partnerships, Inc.
Humboldt State University, Dept. of Social Work
Idaho Council of Catholic Women
ImiCare INC
Interstate Urban Consortium, INC
Iowa Coalition Against Domestic Violence
It's a Dog's World K-9 Academy, Inc.
Karidat/Guma' Esperansa-Shelter for Victims of Domestic Violence
Lee County Board of County Commissioners
Lehigh Acres Social Service Center Inc
LSU-HSC at Earl K Long Medical Center
Lutheran Services of Florida-Northwest
Mercy Community Health
Mercy Medical Center
Michigan State University-School of Criminal Justice
Mosaic Family Services
National Safe Place YMCA
National Underground Railroad Freedom Center
NCTCOG Regional Police Academy
New Mexico Coalition of Sexual Assault Programs, Inc.
New Mexico Commission on the Status of Women
New York Asian Women's Center
Office of Senator Montigny
Office of Social Concerns for the Catholic Archdiocese of San Antonio, Texas
Okaloosa County Sheriff's Office
Orange County Human Trafficking Task Force
Our House Shelter for Runaway and Homeless Youth (a Program of Catholic Charities)
Proverbs Twenty-One Twelve
RENEW Foundation
Safe Home/YWCA of Hanover
Salvation Army
Salvation Army - Western Division, Central Territory
Salvation Army of Alexandria
San Diego Student Servants for God
San Diego Youth and Community Services
Sarasota Family YMCA
SeaHaven INC
Senator Bill Nelson-D
Sex Industry Survivors - Detroit
Sex Industry Survivors - Ft. Myers/Naples
Sex Industry Survivors, Albuquerque/Santa Fe
Sex Industry Survivors-Dallas
Sex Industry Survivors-Orange County
Sex Industry Survivors-San Diego
South Mississippi Children's Center
South Texas Coalition Against Human Trafficking
Southeastern Network of Youth and Family Services
SWOOP, Street Outreach Program of Tennessee Valley Family Services
Tennessee Valley Family Services, INC
Texas RioGrande Legal Aid
The Honorable Catherine Ceips, South Carolina State Representative
The Honorable Lou Correa, California Assembly Member, District 69
Thirteenth Place, INC Youth and Family Services
Transitional Living Program of Tennessee Valley Family Services
United States Attorney's Office
UNO Immigration Ministry Division of UNO Federation Community Services
Voices for Justice
Voices Without Borders, INC
Warren County Children's Home Services
Winona Diocesan Council of Catholic Women
WomanSave International Inc.
Women In Need Network
YMCA Safe Place Services
Youth Services for Oklahoma County, Inc.
YWCA of Greater Toledo
YWCA Rape Crisis Center
Zonta Club of Sanibel-Caption

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 772*

Committee Substitute Favorable 5/4/07
Committee Substitute #2 Favorable 5/15/07

Short Title: Licensure Changes/Hosp. Adult Cr. Hms., MH-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF HEALTH AND HUMAN SERVICES TO SUSPEND ADMISSIONS OR SERVICES IN HOSPITALS AS PART OF TAKING ADVERSE ACTION AGAINST A HOSPITAL'S LICENSE; TO ALLOW FOR THE WAIVER OF HOSPITAL LICENSURE RULES DURING AN EMERGENCY; TO ALLOW CRIMINAL BACKGROUND CHECKS OF EMPLOYEES OF LICENSED MENTAL HEALTH FACILITIES BY PRIVATE ENTITIES; TO MAKE TECHNICAL CORRECTIONS IN THE HEALTH CARE PERSONNEL REGISTRY STATUTES; TO REQUIRE FINES TO BE PAID PRIOR TO TRANSFER OF OWNERSHIP OF ADULT CARE HOMES; AND TO CHANGE TIME FRAMES OF INVESTIGATIONS OF ADULT CARE HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-78 reads as rewritten:

"**§ 131E-78. Adverse action on a license.**

(a) The Department shall have the authority to deny, suspend, revoke, annul, withdraw, recall, cancel, or amend a license in any case when it finds a substantial failure to comply with the provisions of this Part or any rule promulgated under this Part.

~~(b) The Department shall conduct a hearing in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act, when:~~

~~(1) The Department denies an application and the applicant requests a hearing; or~~

~~(2) The Department initiates proceedings under subsection (a).~~

~~(c) Any applicant or operator who is dissatisfied with the decision of the Department as a result of the hearing provided in this section and after a written copy of the decision is served, may request a judicial review under Chapter 150A of the General Statutes, the Administrative Procedure Act.~~

(b1) The Secretary may suspend the admission of any new patients to specific areas of a hospital or suspend specific services of a hospital licensed under this Article where the conditions of the hospital constitute a substantial failure to comply with the provisions of this Part or any rule adopted under this Part and are dangerous to the health or safety of the patients. When the Secretary suspends admissions or specific services, the suspension shall be limited to the smallest possible components of the hospital. The Department shall provide consultation to assist the hospital in correcting the conditions that led to the suspension in order that the suspension can be lifted at the earliest possible time after the Secretary is satisfied that conditions or circumstances merit removal of the suspension. In determining whether to suspend admissions or services under this subsection, the Secretary shall consider the following factors:

(1) The character and degree of impact of the conditions at the hospital on the health and safety of its patients.

(2) The character and degree of impact that the proposed suspension of admissions or services would have on the functionality of the hospital and the availability of services necessary to the community or to current patients of the hospital.

(3) Whether all other reasonable means for correcting the problem have been exhausted and no less restrictive alternative to suspension of admissions or service exists.

(c1) A facility may contest any adverse action on its license under this section in accordance with Chapter 150B of the General Statutes. In contesting the adverse action, the facility must file a petition for a contested case within 20 days after the Department mails notice of the adverse action on the licensee."

SECTION 2. Part 2 of Article 5 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-84. Waiver of rules for hospitals that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to a hospital to the extent necessary to allow the facility to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent to which the rules may be waived, upon a declaration of disaster or emergency in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section 'emergency management agency' is as defined in G.S. 166A-4."

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

"(b) Requirement. – An offer of employment by 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. 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, 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.~~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, 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, Criminal Records Check Unit, shall 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. 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 a provider a State criminal history record check required by this section without the 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 provider. All criminal history information received by the provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section."

SECTION 4.(a) G.S. 131E-114.2 reads as rewritten:

"**§ 131E-114.2. Use of medication aides to perform technical aspects of medication administration.**

(a) Facilities licensed and medication administration services provided under this Part may utilize medication aides to perform the technical aspects of medication administration consistent with G.S. 90-171.20(7) and (8), and G.S. 90-171.43.

(1) A medication aide who is employed in a facility licensed under Article ~~5, Article 6, Part 1, and Article 10~~ 5 and Article 6, Part 1 of this

Chapter shall be listed as a Nurse Aide I on the Nurse Aide I Registry in addition to being listed on the Medication Aide Registry.

(2) Medication administration as used in ~~Article 5, Article 6, Part 1, and Article 10~~ Article 5 and Article 6, Part 1 of this Chapter shall not include intravenous or injectable medication services.

(b) The Commission shall adopt rules to implement this section. Rules adopted by the Commission shall include:

(1) Training and competency evaluation of medication aides as provided for under this section.

(2) Requirements for listing under the Medication Aide Registry as provided for under ~~G.S. 131E-271.~~G.S. 131E-270.

(3) Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with this Part."

SECTION 4.(b) G.S. 131E-270(a) reads as rewritten:

"(a) The Department shall establish and maintain a Medication Aide Registry containing the names of all health care personnel in North Carolina who have successfully completed a medication aide training program that has been approved by the North Carolina Board of ~~Nursing and~~Nursing, passed a State-administered medication aide competency ~~exam.~~exam, and met any other requirements set by the Medical Care Commission."

SECTION 5.(a) G.S. 131D-2(b)(1), as amended by Sections 10.40A(i) and 41.2(a) of S.L. 2005-276, reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of two hundred fifty dollars ($250.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred fifty dollars ($350.00) plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents ($12.50). A license shall not be renewed nor a new license issued for a change of ownership of an adult care home if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and

reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;

b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and

c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

b. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for

substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

SECTION 5.(b) G.S. 131D-26 (a1) reads as rewritten:

"(a1) When the department of social services in the county in which a facility is located receives a complaint alleging a violation of the provisions of this Article pertaining to patient care or patient safety, the department of social services shall initiate an investigation as follows:

(1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.

(2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).

(3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).

(4) Within two weeks in all other situations.

The investigation shall be completed within ~~30~~60 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 772*

Committee Substitute Favorable 5/4/07

Committee Substitute #2 Favorable 5/15/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H772-CSST-83 [v.2]

7/18/2007 7:41:16 PM

Short Title: Licensure Changes/Hosp. Adult Cr. Hms., MH-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF HEALTH AND HUMAN SERVICES TO SUSPEND ADMISSIONS OR SERVICES IN HOSPITALS AS PART OF TAKING ADVERSE ACTION AGAINST A HOSPITAL'S LICENSE; TO ALLOW FOR THE WAIVER OF HOSPITAL LICENSURE RULES DURING AN EMERGENCY; TO ALLOW CRIMINAL BACKGROUND CHECKS OF EMPLOYEES OF LICENSED MENTAL HEALTH FACILITIES BY PRIVATE ENTITIES; TO MAKE TECHNICAL CORRECTIONS IN THE HEALTH CARE PERSONNEL REGISTRY STATUTES; TO REQUIRE FINES TO BE PAID PRIOR TO TRANSFER OF OWNERSHIP OF ADULT CARE HOMES; TO CHANGE TIME FRAMES OF INVESTIGATIONS OF ADULT CARE HOMES; AND TO REQUIRE THE CODIFIER OF RULES TO CHANGE THE NAME OF THE DIVISION OF FACILITY SERVICES AND THE HEALTH SERVICES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-78 reads as rewritten:

"**§ 131E-78. Adverse action on a license.**

(a) The Department shall have the authority to deny, suspend, revoke, annul, withdraw, recall, cancel, or amend a license in any case when it finds a substantial failure to comply with the provisions of this Part or any rule promulgated under this Part.

~~(b) The Department shall conduct a hearing in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act, when:~~

~~(1) The Department denies an application and the applicant requests a hearing; or~~

~~(2) The Department initiates proceedings under subsection (a).~~

~~(c) Any applicant or operator who is dissatisfied with the decision of the Department as a result of the hearing provided in this section and after a written copy of the decision is served, may request a judicial review under Chapter 150A of the General Statutes, the Administrative Procedure Act.~~

(b1) The Secretary may suspend the admission of any new patients to specific areas of a hospital or suspend specific services of a hospital licensed under this Article where the conditions of the hospital constitute a substantial failure to comply with the provisions of this Part or any rule adopted under this Part and are dangerous to the health or safety of the patients. When the Secretary suspends admissions or specific services, the suspension shall be limited to the smallest possible components of the hospital. The Department shall provide consultation to assist the hospital in correcting the conditions that led to the suspension in order that the suspension can be lifted at the earliest possible time after the Secretary is satisfied that conditions or circumstances merit removal of the suspension. In determining whether to suspend admissions or services under this subsection, the Secretary shall consider the following factors:

(1) The character and degree of impact of the conditions at the hospital on the health and safety of its patients.

(2) The character and degree of impact that the proposed suspension of admissions or services would have on the functionality of the hospital and the availability of services necessary to the community or to current patients of the hospital.

(3) Whether all other reasonable means for correcting the problem have been exhausted and no less restrictive alternative to suspension of admissions or service exists.

(c1) A hospital may contest any adverse action on its license under this section in accordance with Chapter 150B of the General Statutes."

SECTION 2. Part 2 of Article 5 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-84. Waiver of rules for hospitals that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to a hospital to the extent necessary to allow the hospital to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent to which the rules may be waived, upon a declaration of disaster or emergency in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the hospital. The emergency management agency requesting temporary shelter or temporary services shall notify the

Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section 'emergency management agency' is as defined in G.S. 166A-4."

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

"(b) Requirement. – An offer of employment by 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. 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, 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.~~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, 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, Criminal Records Check Unit, shall 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. 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 a provider a State criminal history record check required by this section without the 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 provider. All criminal history information received by the provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section."

SECTION 4.(a) G.S. 131E-114.2 reads as rewritten:

"**§ 131E-114.2. Use of medication aides to perform technical aspects of medication administration.**

(a) Facilities licensed and medication administration services provided under this Part may utilize medication aides to perform the technical aspects of medication administration consistent with G.S. 90-171.20(7) and (8), and G.S. 90-171.43.

(1) A medication aide who is employed in a facility licensed under Article ~~5, Article 6, Part 1, and Article 10~~ 5 and Article 6, Part 1 of this Chapter shall be listed as a Nurse Aide I on the Nurse Aide I Registry in addition to being listed on the Medication Aide Registry.

(2) Medication administration as used in ~~Article 5, Article 6, Part 1, and Article 10~~ Article 5 and Article 6, Part 1 of this Chapter shall not include intravenous or injectable medication services.

(b) The Commission shall adopt rules to implement this section. Rules adopted by the Commission shall include:

(1) Training and competency evaluation of medication aides as provided for under this section.

(2) Requirements for listing under the Medication Aide Registry as provided for under ~~G.S. 131E-271.~~G.S. 131E-270.

(3) Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with this Part."

SECTION 4.(b) G.S. 131E-270(a) reads as rewritten:

"(a) The Department shall establish and maintain a Medication Aide Registry containing the names of all health care personnel in North Carolina who have successfully completed a medication aide training program that has been approved by the North Carolina Board of ~~Nursing and~~Nursing, passed a State-administered medication aide competency ~~exam.~~exam, and met any other requirements set by the Medical Care Commission."

SECTION 5.(a) G.S. 131D-2(b)(1), as amended by Sections 10.40A(i) and 41.2(a) of S.L. 2005-276, reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of two hundred fifty dollars ($250.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred fifty dollars ($350.00) plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents ($12.50). A license shall not be renewed nor a new license issued for a change of ownership of an adult care home if outstanding fees, fines, and penalties imposed by the State against the home have not been paid.

Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;

b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and

c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

b. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

SECTION 5.(b) G.S. 131D-26 (a1) reads as rewritten:

"(a1) When the department of social services in the county in which a facility is located receives a complaint alleging a violation of the provisions of this Article pertaining to patient care or patient safety, the department of social services shall initiate an investigation as follows:

(1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.

(2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).

(3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).

(4) Within two weeks in all other situations.

The investigation shall be completed within ~~30~~60 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes."

SECTION 5.5(a). Wherever the name "Division of Facility Services" appears in the North Carolina Administrative Code, the Codifier of Rules shall replace "Division of Facility Services" with "Division of Health Service Regulation."

SECTION 5.5(b). Wherever the name "Health Services Commission" appears in the North Carolina Administrative Code, the Codifier of Rules shall replace "Health Services Commission" with "Commission for Public Health."

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

HOUSE BILL 772:
Licensure Changes/Hosp. Adult Cr. Hms., MH-AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 18, 2007
Introduced by:	Rep. England	**Summary by:**	R. Erika Churchill
Version:	PCS to Third Edition H772-CSST-83		Committee Counsel

SUMMARY: House Bill 772 authorizes the Secretary of the Department of Health and Human Services to suspend patient admission or specific services of a hospital; authorizes the Division of Health Service Regulation to temporarily waive hospital licensure during a declared disaster or emergency; allows private entities to perform State background checks of employees of mental health facilitie; requires all fines to be paid prior to transferring ownership of adult care homes; and allows local departments of social services 60 days to complete complaint investigations of adult care homes.

[As introduced, this bill was identical to S770, as introduced by Sen. Goss, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW & BILL ANALYSIS:

Section 1. *Under current law, the Department of Health and Human Services has the authority to take an adverse action upon a license in any case it finds a substantial failure to comply with provisions of this Part by conducting a hearing in accordance with the Administrative Procedures Act, although the cite is to a previous codification of that Act. An adverse action includes denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license for a hospital.*

The pcs authorizes the Secretary of the Department of Health and Human Services, in addition to the current authority to take adverse action against a license, to suspend admissions of new patients to a specific area of a hospital or suspend specific services of a hospital where conditions are considered dangerous to the health and safety of its patients. The new authority of suspension must be limited to the smallest possible components of the hospital. In making the decision to suspend, the Secretary must consider the following factors:

- The character and degree of impact the conditions would have on a patient's health and safety;
- The character and degree of impact the suspension would have on the functionality of the hospital and its ability to serve current patients and the community;
- If all other reasonable means for correcting the problem have been exhausted.

The hospital may contest any adverse action on its license in accordance with Chapter 150B.

The Department is directed to provide consultation to assist the hospital in correcting any conditions that led to a suspension of admissions or specific services in an effort to lift the suspension as soon as the Secretary is satisfied that the conditions merit removal.

Section 2. *The Division of Health Service Regulation (formerly the Division of Facility Services) has the authority to waive rules pertaining the adult care homes, nursing homes, and home care agencies during declared states of emergency. G.S. 131D-7, G.S. 131E-112.*

The pcs authorizes the Division of Health Service Regulation to temporarily waive rules pertaining to hospitals during times of emergencies declared in accordance to the laws of the North Carolina Emergency Management Act. The section allows the Division to identify which rules and to what extent they may be waived in advance of an emergency. Any emergency management agency requesting temporary shelter or temporary services must notify the Division within 72 hours of the time the preapproved waivers are deemed by that emergency management agency to apply.

Section 3. *Criminal history checks are required or authorized prior to the issuance of licenses, or permanent offers of employment for various occupations or jobs. Generally, the North Carolina Department of Justice conducts the check, returns the information to the State or local agency authorized to conduct the check. For criminal checks of certain employees of nursing homes, adult care homes and home care agencies, the provider may opt to have a 'private entity' conduct the State criminal history check. The information is returned to the provider offering the employment. G.S. 131D-40, G.S. 131E-265.*

The pcs amends G.S. 122C-80 to allow private entities to conduct the required State criminal history check for potential employees of licensed mental health facilities.

Section 4. The pcs makes technical corrections relating to Medication Aides and the Health Care Personnel Registry.

Section 5. The pcs prohibits a new license from being issued due to a change of ownership of an adult care home if outstanding fees, fines, or penalties imposed by the State against the home have not been paid.

The pcs requires investigations of violations at an adult care home must be completed within 60 days. *Currently the requirement is 30 days.*

Section 5.5. The pcs makes a conforming instruction to the Codifier of Rules to change the names of the Division of Facility Services and the Health Services Commission in the Administrative Code. The names were changed in the General Statutes by S.L. 2007-182.

EFFECTIVE DATE: Effective when it becomes law.

H0772e3-SMST-CSST-83

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 772*

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

H772-AST-44 [v.1]

Date _____,2007

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

Senator _____

moves to amend the bill on page 3, line 37 by rewriting that line to read:
"applicant as provided in subsection (c) of this section. For purposes of this subsection, the term 'private entity' means a business regularly engaged in conducting criminal history checks utilizing public records obtained from a State agency." and

on page 3, lines 37-38 by inserting the following between those lines:
"**SECTION 3.1.** G.S. 131D-40 is amended by adding a new subsection to read:
"(h) For purposes of this section, the term 'private entity' means a business regularly engaged in conducting criminal history checks utilizing public records obtained from a State agency."
SECTION 3.2. G.S. 131E-265 is amended by adding a new subsection to read:
"(h) For purposes of this section, the term 'private entity' means a business regularly engaged in conducting criminal history checks utilizing public records obtained from a State agency." ".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 349

Short Title: Local School Board Member Removal. (Public)

Sponsors: Representatives Glazier; England, Faison, Luebke, and Yongue.

Referred to: Education.

February 26, 2007

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAW ALLOWING THE STATE BOARD OF EDUCATION TO REMOVE 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~~ 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.~~

(b) 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 349:
Local School Board Member Removal

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 19, 2007
Introduced by:	Rep. Glazier	**Summary by:**	Kara McCraw
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 349 would repeal the statutory provision that allows the State Board of Education to initiate the process of removing a local school board member.

CURRENT LAW: G.S. 115C-39(a) provides that if the State Board of Education (SBE) has sufficient evidence that a member of a local board of education is not capable of discharging or is not discharging the duties of the office or is guilty of immoral or disreputable conduct, the SBE must notify the chairman of that local board of education. If the member in question is the chairman, then the SBE must notify all of the other members of that local board of education. On receiving such a notice from the SBE, the local board of education must hold a meeting to investigate the charges. If those charges are found to be true, then the office of that member is declared vacant. The member in question must be given proper notice of the hearing and the record of the findings by the other members must be recorded in the minutes of that local board of education.

BILL ANALYSIS: House Bill 349 would repeal G.S. 115C-39(a).

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

BACKGROUND: Under G.S. 14-230, an official of any county, city, or town is guilty of misbehavior in office if the official willfully and corruptly omits, neglects, or refuses to discharge any of the duties of the office, or willfully and corruptly violates the oath of office, and the official shall be removed from office under the sentence of the court as part of the punishment for the offense.

Under G.S. 115C-105.39, the SBE can suspend any of the powers and duties of a local board of education that the SBE considers are necessary or appropriate to improve student performance. The SBE can perform all of these assigned duties and powers for a period of time specified by the SBE. If the SBE subsequently determines that it is necessary to change the governance of the local school administrative unit in order to improve student performance, the SBE can recommend this change to the General Assembly which must then consider future governance of the identified local school administrative unit.

In addition, the North Carolina Constitution has additional requirements in order to hold elected office. Article 6, Section 8 of the North Carolina Constitution states that "any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law" is disqualified from holding elected office.

This summary was substantially contributed to by Drupti Chauhan, House Education Committee Counsel.

H0349e1-SMTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H **2**

HOUSE BILL 454

Committee Substitute Favorable 4/30/07

Short Title: Identity Theft. (Public)

Sponsors:

Referred to:

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE IDENTITY OF INDIVIDUALS BY AUTHORIZING THE TAKING OF A PHOTOGRAPH OF A PERSON OPERATING A MOTOR VEHICLE WHO DOES NOT PRODUCE A VALID DRIVERS LICENSE UPON THE REQUEST OF A LAW ENFORCEMENT OFFICER WHERE THE LAW ENFORCEMENT OFFICER HAS A REASONABLE SUSPICION REGARDING THE TRUE IDENTITY OF THE PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-502(b) reads as rewritten:

"(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor ~~Vehicles."~~Vehicles," except that a photograph may be taken of a person who operates a motor vehicle on a street or highway who does not produce a valid drivers license upon the request of a law enforcement officer where the law enforcement officer has a reasonable suspicion concerning the true identity of the operator of the motor vehicle. A photograph taken under this subsection shall be of the operator of the motor vehicle from the neck up and may be taken at the location where the citation is issued or at the jail if an arrest is made. The photograph must be retained by the law enforcement officer until conclusion of the case and may not be used for any purpose other than to confirm the identity of the alleged offender. Upon a final disposition by the court, the photograph shall be destroyed by the charging law enforcement officer or agency."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Title Change

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H D

HOUSE BILL 454
Committee Substitute Favorable 4/30/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H454-PCS30514-RK-52

Short Title: Identity Theft. (Public)

Sponsors:

Referred to:

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE IDENTITY OF INDIVIDUALS BY AUTHORIZING THE TAKING OF A PHOTOGRAPH OF A PERSON WHO IS CITED FOR A MOTOR VEHICLE MOVING VIOLATION, WHO DOES NOT PRODUCE A VALID DRIVERS LICENSE UPON THE REQUEST OF A LAW ENFORCEMENT OFFICER, AND WHERE THE LAW ENFORCEMENT OFFICER HAS A REASONABLE SUSPICION REGARDING THE TRUE IDENTITY OF THE PERSON, AND TO PROVIDE A CAUSE OF ACTION FOR A PERSON WHOSE IDENTIFYING INFORMATION IS PUBLISHED OVER OBJECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-502 reads as rewritten:

"...

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles." Notwithstanding the prohibition in this subsection, a photograph may be taken of a person who operates a motor vehicle on a street or highway if:

(1) The person is cited by a law enforcement officer for a motor vehicle moving violation, and

(2) The person does not produce a valid drivers license upon the request of a law enforcement officer, and

(3) The law enforcement officer has a reasonable suspicion concerning the true identity of the person.

As used in this subsection, the phrase "motor vehicle moving violation" does not include the offenses listed in the third paragraph of G.S. 20-16(c) for which no points

are assessed, nor does it include equipment violations specified in Part 9 of Article 3 of Chapter 20 of the General Statutes.

(b1) Any photograph authorized by subsection (b) of this section and taken by a law enforcement officer or agency:

(1) Shall only be taken of the operator of the motor vehicle, and only from the neck up.

(2) Shall be taken at either the location where the citation is issued, or at the jail if an arrest is made.

(3) Shall be retained by the law enforcement officer or agency until the final disposition of the case.

(4) Shall not be used for any purpose other than to confirm the identity of the alleged offender.

(5) Shall be destroyed by the law enforcement officer or agency upon a final disposition of the charge.

...."

SECTION 2. Article 2A of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-66. Publication of personal information.**

(a) It shall be a violation of this section for any person to knowingly broadcast or publish to the public on radio, television, cable television, in a writing of any kind, or on the Internet, the personal information of another with actual knowledge that the person whose personal information is disclosed has previously objected to any such disclosure.

(b) As used in this section, "person" means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity, but does not include any:

(1) Government, government subdivision or agency.

(2) Entity subject to federal requirements pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

(c) As used in this section, the phrase "personal information" includes a person's first name or first initial and last name in combination with any of the following information:

(1) Social security or employer taxpayer identification numbers.

(2) Drivers license, State identification card, or passport numbers.

(3) Checking account numbers.

(4) Savings account numbers.

(5) Credit card numbers.

(6) Debit card numbers.

(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).

(8) Digital signatures.

(9) Any other numbers or information that can be used to access a person's financial resources.

(10) Biometric data.

(11) Fingerprints.

(12) Passwords.

(d) Nothing in this section shall:

(1) Limit the requirements or obligations under any other section of this Article, including, but not limited to, G.S. 75-62 and G.S. 75-65.

(2) Apply to the collection, use, or release of personal information for a purpose permitted, authorized, or required by any federal, state, or local law, regulation, or ordinance.

(e) Any person whose property or person is injured by reason of a violation of this section may sue for civil damages pursuant to the provisions of G.S. 1-539.2C."

SECTION 3. G.S. 1-539.2C reads as rewritten:

"**§ 1-539.2C. Damages for identity theft.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General ~~Statutes~~ Statutes, or a violation of G.S. 75-66, may sue for civil damages. For each unlawful act, or each violation of G.S. 75-66, ~~Damages~~ damages may be

(1) ~~in~~ In an amount of up to five thousand dollars ($5,000), but no less than five hundred dollars ~~($500.00)~~ ($500.00), ~~for each incident,~~ or

(2) ~~three~~ Three times the amount of actual damages,

whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party.

(b) If the identifying information of a deceased person is used in a manner made unlawful by Article 19C of Chapter 14 of the General Statutes, or by a violation of G.S. 75-66, the deceased person's estate shall have the right to recover damages pursuant to subsection (a) of this section.

(c) The venue for any civil action brought under this section shall be the county in which the plaintiff resides or any county in which any part of the alleged violation of G.S. 75-66, G.S. 14-113.20 or G.S. 14-113.20A took place, regardless of whether the defendant was ever actually present in that county. Civil actions under this section must be brought within three years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

(d) Civil action under this section does not depend on whether or not a criminal prosecution has been or will be instituted under Article 19C of Chapter 14 of the General Statutes for the acts which are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law."

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses and violations committed on or after that date.

HOUSE BILL 454: Identity Theft

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 18, 2007
Introduced by:	Reps. Folwell, Spear	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H454-CSRK		Committee Co-Counsel

SUMMARY: The proposed committee substitute to House Bill 454 would authorize the taking of a photograph of a motor vehicle operator under specified conditions. It would also provide a cause of action for a person whose personal information is published over their objection. This act becomes effective December 1, 2007, and applies to offenses or violations committed on or after that date.

CURRENT LAW:

The taking of photographs or fingerprints is not authorized when the offense charged is a Class 2 or Class 3 misdemeanor under Chapter 20 (Motor Vehicles) of the General Statutes. Photographs, moving pictures, video or sound recordings, fingerprints, or the like may be taken to show a condition of intoxication or for other evidentiary use.

BILL ANALYSIS:

Section 1: Allows an officer to take a photograph of a vehicle operator if

- The operator is cited for a moving violation;
- The operator vehicle does not produce a valid drivers license upon the request of a law enforcement officer; and
- The law enforcement officer has a reasonable suspicion concerning the true identity of the operator of the motor vehicle.

Section 2: Limits the type and use of a photograph, and specifies the procedures for disposition:

- The photograph may be only of the operator of the motor vehicle from the neck up, and may only be taken at the location where the citation is issued or at the jail if an arrest is made.
- The agency or law enforcement officer must retain the photograph until the conclusion of the case and the photograph cannot be used for any reason other than to confirm the identity of the alleged offender. Upon the final decision by the court, the photograph must be destroyed by the law enforcement officer or agency.

Section 3: Adds a new section to the Identity Theft Protection Act. The section creates a statutory cause of action for a person whose personal information is published without their consent. A person that published the first initial or first name, and last name of another, in addition to one or more of the types of identifying information listed, would be in violation of the statute. The act specifies exemptions from the term "person," including a government, government subdivision, or agency. The act would not supercede any government rules in effect authorizing specific disclosure (*e.g.,* Public Records Act).

The publisher must have actual knowledge that the person objected to the disclosure to be found in violation of the statute. The section provides for civil damages, injunctive relief, and attorneys' fees pursuant to the statute that provides for civil damages for criminal identity fraud violations. (See Section 4 of the bill).

Section 4: Makes conforming amendments to G.S. 1-539.2C. Damages may be in an amount of up to five thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party.

EFFECTIVE DATE: The bill would become effective December 1, 2007 and would apply to offenses or violations committed on or after that date.

Summary Contribution by Drupti Chauhan, Staff Attorney
H0454e2-SMRK-CSRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1284
Committee Substitute Favorable 4/26/07

Short Title: Breach/Construction Contract Accrual Date. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CAUSE OF ACTION FOR BREACH OF CONTRACT OR BREACH OF WARRANTY ARISING OUT OF THE PERFORMANCE OF A CONSTRUCTION PROJECT TO IMPROVE REAL PROPERTY IS DEEMED TO ACCRUE AT THE TIME OF THE OCCURRENCE OF THE BREACH OR UPON SUBSTANTIAL COMPLETION OF THE CONSTRUCTION, WHICHEVER OCCURS LATER.

The General Assembly of North Carolina enacts:

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

"(d) A cause of action for breach of contract or breach of warranty, whether express or implied, arising out of the performance of a construction project to improve real property shall be deemed to accrue at the time of the occurrence of the breach or upon substantial completion of the construction, whichever is later. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50."

SECTION 2. This act is effective when it becomes law, applies to actions filed on or after that date, and does not revive claims previously barred under G.S. 1-15.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1284

Committee Substitute Favorable 4/26/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1284-CSTC-51 [v.5]

7/18/2007 3:32:05 PM

Short Title: Modify Stat. of Limit. for Constr. Contracts. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CAUSE OF ACTION ARISING OUT OF A CONTRACT TO IMPROVE REAL PROPERTY OTHERWISE BARRED BY THE STATUTE OF LIMITATIONS MAY BE COMMENCED NO LATER THAN NINETY DAYS AFTER SUBSTANTIAL COMPLETION OF THE CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-52 reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action -

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1). Unless otherwise provided by statute, if the preceding sentence of this subsection would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought no later than ninety days after substantial completion of the improvement, provided notice of the claim has been given if required by contract. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50(a)(5)c."

SECTION 2. G.S. 1-53 reads as rewritten:

"**§ 1-53. Two years.**

Within two years –

(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. Unless otherwise provided by statute, if the preceding sentence of this subsection would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought

no later than ninety days after substantial completion of the improvement, provided notice of the claim has been given if required by contract. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50(a)(5)c. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article."

SECTION 3. This act is effective when it becomes law, applies to actions filed on or after that date, and does not revive claims previously barred under G.S. 1-52(1) or G.S. 1-53(1).

HOUSE BILL 1284:
Breach/Construction Contract Accrual Date

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 19, 2007
Introduced by:	Rep. Stam	**Summary by:**	Kara McCraw
Version:	PCS to Second Edition H1284-CSTC-51[v.5]		Committee Counsel

SUMMARY: ***The PCS for House Bill 1284 would provide the following exception to the existing statute of limitations for contracts to improve real property under G.S. 1-52 and 1-53: if the applicable statute of limitations had run and would bar commencement of an action, the action could be brought no later than ninety days after substantial completion of the improvement.***

CURRENT LAW: The relevant sections are set out in full on the back of the summary.

G.S. 1-15(a) provides that civil actions can only be commenced within periods prescribed in the Civil Procedure chapter after the cause of action has accrued, unless a statute specifically prescribes a different limitation. Case law has held that causes of action for both breach of contract and breach of warranty accrue on the date of the breach. Kaleel Builders, Inc. v. Ashby, 161 N.C.App. 34, 43-44, 587 S.E.2d 470, 477 (2003).

G.S. 1-52(1) creates a statute of limitations of three years for actions on a contract, obligation, or liability arising out of a contract, express or implied, except as otherwise provided in the sections preceding and in G.S. 1-53(1).

G.S. 1-53(1) provides for a two-year statute of limitations for actions against a local unit of government upon a contract, obligation, or liability arising out of a contract, express or implied.

G.S. 1-50(5) creates a statute of repose of six years for actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property, running from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement. "Substantial completion" is defined in G.S. 1-50(c)(5)(c) as the "degree of completion of a project, improvement or specified area or portion therefore (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it is intended. The date of substantial completion may be established by written agreement."

BILL ANALYSIS:

Section 1: The PCS to House Bill 1284 would amend G.S. 1-52(1) to provide that, unless otherwise provided by statute, if the three year statute of limitation would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought no later than ninety days after substantial completion of the improvement. The term "substantial completion" as used in the subsection would have the same meaning as in G.S. 1-50.

Section 2: The PCS to House Bill 1284 would amend G.S. 1-53(1) to provide that, unless otherwise provided by statute, if the two year statute of limitation would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought no later than ninety days after substantial completion of the improvement. The term "substantial completion" as used in the subsection would have the same meaning as in G.S. 1-50.

EFFECTIVE DATE: This bill would become effective when it becomes law and would apply to actions filed on or after that date. It would not revive claims previously barred under G.S. 1-52(1) or G.S. 1-53(1).

BACKGROUND: In ABL Plumbing v. Bladen County Board of Education, 175 N.C. App. 164 (2005), the N.C. Court of Appeals held that a cause of action for breach of contracts accrues as soon as the injury becomes apparent to the claimant or should reasonably become apparent, and held that the statute of limitations barred an action against the Bladen Board of Education for breach of contract and breach of warranty filed more than two

years after the contract was breached and the plaintiff was aware of the breach. Plaintiff suggested that a new rule applicable to actions on construction contracts be adopted, providing that a cause of action would not accrue until substantial completion of performance. Plaintiff based this argument on policy grounds, including that such a change would encourage completion of construction contracts, avoid abandonment and litigation, and encourage nonjudical resolution of controversies. The Court of Appeals stated that such arguments were better addressed to the legislature and declined to adopt the new rule.

H1284e2-SMTC-CSTC

§ 1-15. Statute runs from accrual of action.

(a) Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute.

§ 1-52. Three years.

Within three years an action -

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).

§ 1-53. Two years.

Within two years –

(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article.

§ 1-50. Six years.

(a) Within six years an action –

(5) a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;

2. Actions to recover damages for the negligent construction or repair of an improvement to real property;

3. Actions to recover damages for personal injury, death or damage to property;

4. Actions to recover damages for economic or monetary loss;

5. Actions in contract or in tort or otherwise;

6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;

7. Actions against a surety or guarantor of a defendant described in this subdivision;

8. Actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;

9. Actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, "substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

SENATE JUDICIARY I COMMITTEE
(Civil)

July 24, 2007
9 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, July 24 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chair R. C. Soles, Member Charlie Albertson, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator Janet Cowell, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator Richard Stevens, and Senator Jerry Tillman. .

Chairman Nesbitt called the meeting to order at 9:09 a.m. and recognized Rep. Moore for House Bill 1328, a bill requiring a convicted sex offender's full disclosure of the offense in any child custody ex parte pleadings. A Proposed Committee Substitute was passed to members; Sen. Brown moved for its adoption. The PCS was adopted unanimously.

Sen. Brunstetter asked what happens if the convicted sex offender did not disclose. Rep. Moore answered that there would be sanctions levied by the judge. Sen. Brunstetter then moved for favorable report for the proposed committee substitute, unfavorable as to original bill. The motion passed unanimously.

Chairman Nesbitt then called Rep. Stam to explain House Bill 1284, a bill concerning construction breaches of contract. A Proposed Committee Substitute was passed to members. Sen. Albertson moved for adoption of the PCS, the PCS was adopted. Two lobbyists spoke against the bill, Paul Wilms of the North Carolina Homebuilders Association and Spiro Flagas, a Deputy Secretary at the North Carolina Department of Administration. Mr. Wells said that he would like to see the bill carry over to the next session. Chairman Nesbitt noted irony in the bill's history: that it was initially brought up by contractors who now oppose the bill.

Susan Harrison of Wake County Public School System also spoke against the bill. Discussion ensued among members, and Sen. Stevens motioned for favorable report, unfavorable as to original bill. Discussion continued. Sen. Brunstetter commented that the homebuilders' problems needed to be figured out before the bill moved forward. Rep. Stam then asked that the bill be pulled from further discussion. Chairman Nesbitt pulled the bill.

Although not on the agenda, Chairman Nesbitt explained to the committee that the Appropriations Committee asked the committee to review current Medicaid statutes. A proposed committee substitute was passed to the committee regarding Medicaid Estate Recovery. After discussion about the PCS, Chairman Nesbitt appointed a subcommittee to review the PCS. Subcommittee members were Sen. McKissick, Sen. Brown, Sen. Brock, Sen. Stevens and Chairman Nesbitt.

A second Medicaid Proposed Committee Substitute was distributed among members. This PCS dealt with the transfer of assets in situations of hardship. It was explained that the federal government looks back five years and may penalize an applicant if found in error. Sen. Nesbitt told the committee to find provisions that all parties can agree to. Sen. Soles asked to define hardship. Discussion continued. Chairman Nesbitt explained the bill to the committee, noting that in the new PCS one-half of assets are protected if an applicant is not trying to defraud Medicaid. Discussion among members continued and a third unknown Proposed Committee Substitute was distributed.

There was minimal discussion of the third PCS, an act amending laws requiring data sharing among health insurers. Chairman Nesbitt appointed the same subcommittee to work with the PCS. The meeting was adjourned at 10:40 a.m.

Copies of House Bill 1328, a Proposed Committee Substitute for HB 1328, a Bill Analysis for the PCS for HB 1328, House Bill 1284 (2nd Edition), a Proposed Committee Substitute for HB 1284, a Bill Analysis for the PCS for HB 1284 (2nd), Unknown Bill No. 1, Unknown Bill No. 2, and Unknown Bill No. 3 are attached to the Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, and 9, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 1

HOUSE BILL 1328

Short Title:	Req. Disclosure/Sex Offenders/Child Custody.	(Public)
Sponsors:	Representatives Moore; Brown, Current, Faison, Farmer-Butterfield, Gillespie, Glazier, Goodwin, Harrison, Pate, and Setzer.	
Referred to:	Judiciary II.	

April 5, 2007

A BILL TO BE ENTITLED

AN ACT REQUIRING A PERSON CONVICTED OF A SEX OFFENSE WHO IS PURSUING CHILD CUSTODY EX PARTE TO DISCLOSE THE CONVICTION IN THE PLEADINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.1 is amended by adding a new subsection to read:

"(a1) Notwithstanding any other provision of law, any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) shall disclose the conviction in the pleadings."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1328
PROPOSED SENATE COMMITTEE SUBSTITUTE H1328-PCS60394-ST-87

Short Title: Req. Disclosure/Sex Offenders/Child Custody. (Public)

Sponsors:

Referred to:

April 5, 2007

A BILL TO BE ENTITLED

AN ACT REQUIRING A PERSON CONVICTED OF A SEX OFFENSE WHO IS PURSUING CHILD CUSTODY EX PARTE TO DISCLOSE THE CONVICTION IN THE PLEADINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.1 is amended by adding a new subsection to read:

"(a1) Notwithstanding any other provision of law, any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) shall disclose the conviction in the pleadings."

SECTION 2. This act becomes effective October 1, 2007, and applies to actions or proceedings filed on or after that date.

HOUSE BILL 1328:
Req. Disclosure/Sex Offenders/Child Custody

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 23, 2007
Introduced by:	Rep. Moore	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1328-CSST-87		Committee Counsel

SUMMARY: House Bill 1328 would require a person convicted of a sex offense who is seeking child custody ex parte to disclose the conviction in the pleadings.

CURRENT LAW: Any parent, relative, or other person claiming the right to custody of a minor child may institute an action or proceeding for the custody of that child. 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 minor child may not claim the right to custody of that minor child. "Custody" generally includes custody and visitation. G.S. 50-13.1(a).

A temporary order for custody which changes the living arrangements of a child or changes custody may not be entered ex parte and prior to service of process or notice, unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse or that there is a substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of North Carolina courts. G.S. 50-13.5(d)(3).

BILL ANALYSIS: House Bill 1328 would require any person who institutes an action or proceeding for child custody ex parte to disclose in the pleadings any conviction of a sexually violent offense as defined in G.S. 14-208.6(5).

G.S. 14-208.6(5) is as follows:

> (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. 14-43.13 (subjecting or maintaining a person for sexual servitude), 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.

EFFECTIVE DATE: Effective October 1, 2007 and applies to actions or proceedings filed on or after that date.

H1328e1-SMST-CSST-87

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1284
Committee Substitute Favorable 4/26/07

Short Title: Breach/Construction Contract Accrual Date. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CAUSE OF ACTION FOR BREACH OF CONTRACT OR BREACH OF WARRANTY ARISING OUT OF THE PERFORMANCE OF A CONSTRUCTION PROJECT TO IMPROVE REAL PROPERTY IS DEEMED TO ACCRUE AT THE TIME OF THE OCCURRENCE OF THE BREACH OR UPON SUBSTANTIAL COMPLETION OF THE CONSTRUCTION, WHICHEVER OCCURS LATER.

The General Assembly of North Carolina enacts:

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

"(d) A cause of action for breach of contract or breach of warranty, whether express or implied, arising out of the performance of a construction project to improve real property shall be deemed to accrue at the time of the occurrence of the breach or upon substantial completion of the construction, whichever is later. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50."

SECTION 2. This act is effective when it becomes law, applies to actions filed on or after that date, and does not revive claims previously barred under G.S. 1-15.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1284
Committee Substitute Favorable 4/26/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1284-CSTC-51 [v.5]

7/18/2007 3:32:05 PM

Short Title: Modify Stat. of Limit. for Constr. Contracts. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CAUSE OF ACTION ARISING OUT OF A CONTRACT TO IMPROVE REAL PROPERTY OTHERWISE BARRED BY THE STATUTE OF LIMITATIONS MAY BE COMMENCED NO LATER THAN NINETY DAYS AFTER SUBSTANTIAL COMPLETION OF THE CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-52 reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action -

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1). Unless otherwise provided by statute, if the preceding sentence of this subsection would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought no later than ninety days after substantial completion of the improvement, provided notice of the claim has been given if required by contract. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50(a)(5)c."

SECTION 2. G.S. 1-53 reads as rewritten:

"**§ 1-53. Two years.**

Within two years –

(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. Unless otherwise provided by statute, if the preceding sentence of this subsection would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought

no later than ninety days after substantial completion of the improvement, provided notice of the claim has been given if required by contract. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50(a)(5)c. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article."

SECTION 3. This act is effective when it becomes law, applies to actions filed on or after that date, and does not revive claims previously barred under G.S. 1-52(1) or G.S. 1-53(1).

Bill Held Attachment 6

HOUSE BILL 1284:
Breach/Construction Contract Accrual Date

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 24, 2007
Introduced by:	Rep. Stam	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to Second Edition H1284-CSTC-51[v.11]		

SUMMARY: The PCS for House Bill 1284 would provide the following exception to the existing statute of limitations for contracts to improve real property under G.S. 1-52 and 1-53: if the applicable statute of limitations had run and would bar commencement of an action, the action could be brought no later than 1) ninety days after substantial completion of the improvement, or 2) if terminated prior to substantial completion, no later than ninety days after termination.

The revised PCS makes the following changes:

- *Deletes the phrase "of the improvement" following substantial completion.*
- *Replaces the phrases "Except as otherwise provided by statute" with "Except as otherwise provided by law".*
- *Provides that if a contract otherwise barred is terminated prior to substantial completion, the action may be brought no later than ninety days after the date of termination.*

CURRENT LAW: The relevant sections are set out in full on the back of the summary.

G.S. 1-15(a) provides that civil actions can only be commenced within periods prescribed in the Civil Procedure chapter after the cause of action has accrued, unless a statute specifically prescribes a different limitation. Case law has held that causes of action for both breach of contract and breach of warranty accrue on the date of the breach. Kaleel Builders, Inc. v. Ashby, 161 N.C.App. 34, 43-44, 587 S.E.2d 470, 477 (2003).

G.S. 1-52(1) creates a statute of limitations of three years for actions on a contract, obligation, or liability arising out of a contract, express or implied, except as otherwise provided in the sections preceding and in G.S. 1-53(1).

G.S. 1-53(1) provides for a two-year statute of limitations for actions against a local unit of government upon a contract, obligation, or liability arising out of a contract, express or implied.

G.S. 1-50(5) creates a statute of repose of six years for actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property, running from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement. "Substantial completion" is defined in G.S. 1-50(c)(5)(c) as the "degree of completion of a project, improvement or specified area or portion therefore (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it is intended. The date of substantial completion may be established by written agreement."

BILL ANALYSIS:

Section 1: The PCS to House Bill 1284 would amend G.S. 1-52(1) to provide that, unless otherwise provided by law, if the three year statute of limitation would bar commencement of a cause of action arising out of a contract to improve real property, such an action may be brought 1) no later than ninety days after substantial completion, or 2) if the contract is terminated prior to substantial completion, no later than ninety days after termination of the contract. The term "substantial completion" as used in the subsection would have the same meaning as in G.S. 1-50.

Section 2: The PCS to House Bill 1284 would amend G.S. 1-53(1) to provide that, unless otherwise provided by law, if the two year statute of limitation would bar commencement of a cause of action arising out of a contract to

improve real property, such an action may be brought 1) no later than ninety days after substantial completion, or 2) if the contract is terminated prior to substantial completion, no later than ninety days after termination of the contract. The term "substantial completion" as used in the subsection would have the same meaning as in G.S. 1-50.

EFFECTIVE DATE: This bill would become effective when it becomes law and would apply to actions filed on or after that date. It would not revive claims previously barred under G.S. 1-52(1) or G.S. 1-53(1).

BACKGROUND: In ABL Plumbing v. Bladen County Board of Education, 175 N.C. App. 164 (2005), the N.C. Court of Appeals held that a cause of action for breach of contracts accrues as soon as the injury becomes apparent to the claimant or should reasonably become apparent, and held that the statute of limitations barred an action against the Bladen Board of Education for breach of contract and breach of warranty filed more than two years after the contract was breached and the plaintiff was aware of the breach. Plaintiff suggested that a new rule applicable to actions on construction contracts be adopted, providing that a cause of action would not accrue until substantial completion of performance. Plaintiff based this argument on policy grounds, including that such a change would encourage completion of construction contracts, avoid abandonment and litigation, and encourage nonjudical resolution of controversies. The Court of Appeals stated that such arguments were better addressed to the legislature and declined to adopt the new rule.

H1284e2-SMTC-CSTC

§ 1-15. Statute runs from accrual of action.

(a) Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute.

§ 1-52. Three years.

Within three years an action -

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).

§ 1-53. Two years.

Within two years –

(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article.

§ 1-50. Six years.

(a) Within six years an action –

(5) a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;

2. Actions to recover damages for the negligent construction or repair of an improvement to real property;

3. Actions to recover damages for personal injury, death or damage to property;

4. Actions to recover damages for economic or monetary loss;

5. Actions in contract or in tort or otherwise;

6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;

7. Actions against a surety or guarantor of a defendant described in this subdivision;

8. Actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;

9. Actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, "substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

UNKNOWN BILL

PROPOSED COMMITTEE SUBSTITUTE UNKNOWN-CSST-90 [v.2]

7/23/2007 11:34:03 PM

Short Title: Medicaid Estate Recovery. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE MEDICAID ESTATE RECOVERY LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-70.5 through G.S. 108A-70.9, as enacted by Section 10.21C(c) of S.L. 2005-276, and as amended by Section 16 of S.L. 2005-345, and amended by Section 10.9B of S.L. 2006-66, and as further amended by Section 10 of S.L. 2007-145, read as rewritten:

"**§ 108A-70.5. Medicaid Estate Recovery Plan.**

(a) There is established in the Department of Health and Human Services, the Medicaid Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993. The Department shall administer the program in accordance with applicable federal law and regulations, including those under Title XIX of the Social Security Act, 42 U.S.C. § 1396(p). To the extent allowed by section 1396(p) of Title XIX of the Social Security Act, the Department may impose liens against real property, including the home, of a recipient of medical assistance. The Department shall file any liens imposed under this section in the court where the property is located in the same manner as for any other lien under North Carolina law.

(b) As used in this section:

(1) "Medical assistance" means medical care services paid for by the North Carolina Medicaid Program on behalf of the recipient:

a. If the recipient of any age is receiving medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be expected to be discharged to return home; or

b. If the recipient is 55 years of age or older and is receiving one or more of the following medical care services:

1. Nursing facility services.

2. Home and community-based services.

3. Hospital care and prescription drugs related to nursing facility services or home and community-based services.
4. Personal care services.
5. Medicare premiums.
6. Private duty nursing.
7. Home health aide services.
8. Home health therapy.
9. Speech pathology services.

(2) "Estate" means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1.

(3) "Home" means property in which a recipient has, or had immediately before or at the time of the recipient's death, an ownership interest or legal title to, consisting of the recipient's dwelling and the land used and operated in connection with the dwelling.

(c) The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. To the extent that allowable Medicaid claims are not satisfied as a result of the execution of any liens held by the Department, the Department is a fifth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other fifth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

(d) The Department of Health and Human Services shall adopt rules pursuant to Chapter 150B of the General Statutes to implement the Plan to ensure that all recipients are notified that their estates are subject to recovery at the time they become eligible to receive medical assistance.

(e) Regarding trusts that contain the assets of an individual who is disabled as defined in Title 19 of Section 1014(a)(3) of the Social Security Act, as amended, if the trust is established and managed by a nonprofit association, to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the nonprofit association, the trust pays to the Department from these remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the North Carolina Medicaid Program.

"§ 108A-70.6. (Effective August 1, 2007) Postponement of estate recovery required in cases of undue hardship.

(a) The Department shall postpone or waive its claim pursuant to G.S. 108A-70.5, including the execution of a lien in whole or in part, when the Department determines that the enforcement of its claim would work an undue hardship to an heir or a beneficiary of the Medicaid recipient. Nothing in this section shall be construed to prevent the Department from enforcing its claim if the owner of the property sells or transfers ownership of the property that is subject to the Department's claim.

(b) A claim of undue hardship to an heir or beneficiary shall be made in writing to the Department within 30 days after the receipt of notification of the Medicaid lien or claim. The claim for hardship shall describe the financial circumstance of the heir or beneficiary and the basis for the claim.

(c) An undue hardship exists if:

(1) The property subject to the lien has a tax value that is equal to or less than thirty thousand dollars ($30,000).

(2) The property subject to the Department's claim is the sole source of income for a surviving heir or beneficiary, and the loss of the net income derived from the property would result in the heir's or beneficiary's annual gross income to fall below one hundred percent (100%) of the federal poverty guidelines in the year in which the hardship is claimed; or

(3) The sale of the property would be required to satisfy the Department's claim, and all of the following conditions are met:

a. The heir or beneficiary resided in the decedent's home on a continual basis for at least 24 months immediately prior to the date of the recipient's death and the heir or beneficiary was using the property as a principal place of residence on the date of the recipient's death;

b. The heir or beneficiary has, from the time the Department first presents its claim for recovery against the deceased recipient's estate and after, annual gross income in the amount not exceeding one hundred fifty percent (150%) of the federal poverty income standard;

c. The heir or beneficiary owns no other real property or agrees to sell other real property in partial payment of the Department's claim; and

d. The heir or beneficiary owns other assets not exceeding a net value of thirty thousand dollars ($30,000).

"§ 108A-70.7. (Effective August 1, 2007) Estate recovery not cost effective.

The Department shall waive its claim or lien imposed under G.S. 108A-70.5 upon the Department's determination that:

(1) The amount of Medicaid payments for services and benefits subject to recovery is less than eight thousand dollars ($8,000); or

(2) The assets subject to the Department's claim or lien are less than five thousand dollars ($5,000).

"§ 108A-70.8. (Effective August 1, 2007) Notice of estate recovery.

(a) The Department shall provide each applicant for medical assistance, or the applicant's representative, written notice that:

(1) Receipt of medical assistance may result in a Medicaid claim or lien upon the recipient's estate, including the recipient's home, to recover costs paid on behalf of the recipient for medical assistance in accordance with G.S. 108A-70.5; and

(2) The Department may seek a lien against the real property of a recipient of any age before or after the recipient's death in the amount of assistance paid or to be paid for the recipient if the recipient is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and the Department determines, after notice and an opportunity for a hearing in accordance with applicable law, that the recipient cannot reasonably be expected to be discharged and return home.

(b) Notice under this section shall also explain the hardship conditions under which estate recovery, including the execution of a lien, may be postponed or waived.

"**§ 108A-70.9. (Effective August 1, 2007) County departments of social services to provide information.**

The Department may require the county department of social services administering medical assistance to gather and provide the Department with the information and administrative or legal assistance needed to recover medical assistance under G.S. 108A-70.5. The Department shall pay to the county department of social services an amount equal to twenty percent (20%) of the nonfederal share of recovery collected by the Department. The Department may withhold payments under this section for a county department's failure to comply with the Department's requirements under this section."

SECTION 2. This act becomes effective _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

UNKNOWN BILL
PROPOSED COMMITTEE SUBSTITUTE UNKNOWN-CSST-89 [v.1]

7/23/2007 11:29:28 PM

Short Title: Medicaid Hardship Waivers. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT A PROCEDURE FOR THE WAIVER OF THE MEDICAID TRANSFER OF ASSETS PENALTY DUE TO HARDSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-58.2. Waiver of transfer of assets penalty due to hardship.**

(a) Prior to imposition of a period of ineligibility for long-term care services because of an asset transfer, also known as a penalty period, the county department of social services shall notify the individual of the individual's right to request a waiver of the penalty period because it will cause an undue hardship to the individual. The Director of the county department of social services or the Director's designee shall grant a waiver of the penalty period due to undue hardship if the individual meets the conditions set forth in subsection (e) of this section. For the purpose of this rule, "long term care services" are those services described in 42 U.S.C. 1396p(c)(1)(C)(i) and (ii).

(b) When a Medicaid applicant who is requesting Medicaid to pay for institutional care requests a waiver of a penalty period due to undue hardship, the determination of whether to waive the penalty period shall be processed as part of the Medicaid application and is subject to the application processing standards set forth in 10A NCAC 21B .0203.

(c) When an ongoing Medicaid recipient applies for institutional care or is receiving Medicaid payment for institutional care receives the notice described in subsection (a) of this section, the recipient has 12 calendar days from the date of the notice to request a waiver of the penalty due to undue hardship. The following are the procedures for processing the waiver request:

(1) Within 5 work days of receipt of a request for a waiver of the transfer of assets penalty, the county department of social services shall notify the individual in writing of the information and documentation

necessary to determine if the requirements for approving the undue hardship waiver are met.

(2) The individual shall have 12 calendar days from the date of the notice specified in Subdivision (1) of this subsection to provide the necessary information and documentation to establish the undue hardship.

(3) If at the end of the first 12 calendar day period the necessary information and documentation has not been received by the county department of social services, the county department of social services shall again notify the individual of the necessary information and documentation. The individual shall be given an additional 12 calendar days to provide the information and documentation.

(4) If the individual fails to request the undue hardship waiver within 12 calendar days from the date of the notice described in subsection (a) of this section, the county department of social services shall impose the transfer of assets penalty in accordance with notice requirements in G.S.108A-79.

(5) If by the end of the 12 calendar days from the notice described in Subdivision (3) of this subsection, the necessary information and documentation has not been received by the county department of social services, the county department of social services shall deny the request for waiver of the penalty for undue hardship and notify the individual of the denial in accordance with G.S. 108A-79.

(6) If by the end of the time allowed under Subdivisions (2) and (3) of this subsection the county department of social services has received the necessary information and documentation, the county department of social services shall make a determination of whether the imposition of the penalty period would cause an undue hardship to the individual. The county department of social services shall complete the determination and notify the individual, pursuant to subsection (g) of this section, of whether the imposition of the penalty period will be waived due to undue hardship within 12 calendar days of the receipt of the necessary information and documentation.

(7) If as part of the determination described in Subdivision (6) of this subsection the county department of social services identifies the need for additional information and documentation, it shall notify the individual in writing of that information and documentation. This notice shall initiate a new period of time for the individual to provide the information and documentation as set forth in Subdivisions (2) and (3) of this subsection. Within 12 calendar days of the receipt of the additional information and documentation, the county department of social services shall complete the determination and notify the individual, pursuant to subsection (g) of this section, of whether the imposition of the penalty period will be waived due to undue hardship.

(d) As required by 42 U.S.C. 1396p(c)(2)(D), the facility in which an institutionalized individual is residing may request an undue hardship waiver on behalf of the institutionalized individual with the written consent of the individual or the personal representative of the individual. A facility applying for a waiver for an individual residing in the facility shall adhere to the requirements of this Rule but shall not be required to advance the costs of acquiring an attorney to aid the institutionalized individual.

(e) Except as provided for in subsection (f) of this section undue hardship exists if the imposition of the penalty period would deprive the individual of medical care, such that the individual's health or life would be endangered; or of food clothing, shelter, or other necessities of life. The individual must provide the information and documentation necessary to demonstrate to the Director of the county department of social services or the Director's designee that:

(1) The individual currently has no alternative source of income or resources available to provide the medical care or food, clothing, shelter or other necessities of life that the individual would be deprived of due to the imposition of the penalty; and

(2) The individual or some other person acting on the individual's behalf is making a good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset, which may include::

a. Seeking the advice of an attorney and pursuing any available legal or equitable remedies such as asset freezing, assignment, or injunction; or seeking modification, avoidance or nullification of a financial instrument, promissory note, loan, mortgage or other property agreement, or other similar transfer agreement; and

b. Cooperating with any attempt to recover the transferred asset or the fair market value of the transferred asset.

(3) The following definitions shall apply to subsection (e) of this section..

a. "Health or life would be endangered" means a medical doctor with knowledge of the individual's medical condition certifies in writing that in his or her professional opinion, the individual will be in danger of death or the individual's health will suffer irreparable harm if a penalty period is imposed.

b. "Other necessities of life" includes basic, life sustaining utilities, including water, heat, electricity, phone, and other items or activities that without which the individual's health or life would be endangered.

c. "Income" means all income of the individual and to the community spouse less an amount for the community spouse equal to the minimum monthly maintenance needs allowance as determined under 42 U.S.C. 1396r-5(d)(3)(A)(ii) without regard to any adjustment that would be made under 42 U.S.C.

1396r-5(e3) plus fifty percent (50%) of other income in excess of the minimum monthly maintenance needs allowance as described in this section.

d. "Resources" means all resources of the individual and of the community spouse except for the excluded home, the equity of a motor vehicle up to $30,000, other personal property, and an amount of other resources for the community spouse equal to sixty percent (60%) of the community spouse resource allowance as determined under 42 U.S.C 1396r-5(f)(2)(A) which is not less than the amount specified in 42 U.S.C. 1396r-5(f)(2)(A)(i) or greater than sixty percent (60%) of the amount specified in 42 U.S.C. 1396r-5(f)(2)(A)(ii).

(f) An undue hardship shall not exist when the application of a transfer of assets penalty merely causes the individual an inconvenience or restricts his or her lifestyle.

(g) If the Director of the county department of social services or the Director's designee determines that:

(1) An undue hardship exists, the county department of social services shall waive the penalty period and notify the individual of approval of the waiver of the penalty in accordance with G.S. 108A-79.

(2) An undue hardship does not exist, the county department of social services shall deny the request for the waiver of the penalty and notify the individual of denial of the waiver request in accordance with G.S. 108A-79.

(h) During a penalty period that has been waived because of undue hardship, acquisition by the individual of new or increased income or resources shall be treated as a change in situation and evaluated pursuant to the rules adopted by the Department of Health and Human Services.

(i) While the determination on a request for a waiver of the penalty period due to undue hardship is pending, Medicaid shall not make payments for nursing facility services or intermediate care facility for the mentally retarded services to hold a bed for the individual, as described in 42 U.S.C. 1396p(c)(2)(D). However, if the individual is institutionalized and receiving Medicaid payment for services, Medicaid will maintain the same level of services until the last day of the month after the later latter of the following:

(1) Expiration of the ten workday period following the notice required by G.S. 108A-79, or

(2) The date of the decision of a local appeal hearing described in G.S. 108A-79 is issued if the individual requests an appeal of the imposition of a transfer of assets penalty period within the ten workday period described in Subdivision (1) of subsection (i) of this Section."

SECTION 2. Notwithstanding G.S. 150B-19(4), the Department of Health and Human Services, Division of Medical Assistance, shall adopt rules that are substantially identical to G.S. 108A-58.2, as enacted by this section. The Department of Health and Human Services may adopt temporary rules substantially identical to

G.S. 108A-58.2, as enacted by this section, to effectuate the purposes of this section. Temporary rules adopted under this section shall replace any other temporary rules on the waiver of the transfer of assets penalty due to undue hardship that were adopted by the Department and are pending review or approval by the Rules Review Commission as of the effective date of this act.

SECTION 3. This act becomes effective August 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

U D

UNKNOWN BILL
PROPOSED COMMITTEE SUBSTITUTE UNKNOWN-CSST-91 [v.1]

7/23/2007 11:36:42 PM

Short Title: Required Data Sharing by Health Insurers. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RESPECTING REQUIRED DATA SHARING BY HEALTH INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-55.4 reads as rewritten:

"**§ 108A-55.4. Insurers to provide certain information to Department of Health and Human Services.**

(a) As used in this section, the terms:

(1) "Department" means the Department of Health and Human Services.

(2) "Division" means the Division of Medical Assistance of the Department of Health and Human Services.

(3) "Health insurer" includes self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, [29 USC Section 1167(1)]), service benefit plans, managed care organizations, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service as a condition of doing business in the State.

(4) "Medical assistance" means medical assistance benefits provided under the State Medical Assistance Plan.

(5) 'Subscriber' means the policyholder of the insurance.

(6) 'Applicant' means an applicant or former applicant of medical assistance benefits.

(7) 'Recipient' means a present or former recipient of medical assistance benefits.

(7) 'Request' means any inquiry by the Department or Division for the purpose of determining the existence of insurance where the Department or Division may have expended public assistance benefits

or the enrollment of a child in a private health plan pursuant to an order of medical support in a child support case.

(b) Health insurers, and pharmacy benefit managers regulated as third-party administrators under Article 56 of Chapter 58 of the General Statutes, shall provide, with respect to ~~individuals who are eligible for, or are provided, medical assistance,~~an applicant or recipient upon request of the ~~Division,~~Division or its authorized contractor, information to determine during what period the individual or the individual's spouse or dependents may be ~~(or~~or may have ~~been)~~been covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the subscriber's name, subscriber's address, subscriber's identification number, ~~and~~ identifying number of the ~~plan~~plan, applicant's or recipient's social security number, applicant's or recipient's name, and applicant's or recipient's date of birth) in a manner prescribed by the ~~Division.~~Division or its authorized contractor. Notwithstanding any other provision of law, and in addition to the requirements set forth in subdivision (6) of this subsection, every health insurer ~~issuing a health benefit plan~~ shall provide, not more frequently than twelve times in a year and at no cost, to the Department of Health and Human Services, Division of Medical Assistance, or the Department's or Division's authorized contractor, upon its request, ~~information, including automated data matches conducted under the direction of the Department of Health and Human Services, Division of Medical Assistance,~~ information as necessary ~~to~~ so that the Division may (i) identify individuals who may also be applicants or recipients covered under the ~~insurer's health~~ benefit plans of the health insurer; ~~who are also recipients of medical assistance;~~ (ii) determine the period during which the ~~individual or the individual's spouses~~ individual, the individual's spouse, or the individual's dependents may be or may have been covered by the health benefit plan; and (iii) determine the nature of the coverage. To facilitate the Division or its authorized contractor in obtaining this and other related information, every health insurer shall:

~~(1) Cooperate with the Division to determine whether a named individual who is a recipient of medical assistance may be covered under the insurer's health benefit plan and eligible to receive benefits under the health benefit plan for services provided under the State Medical Assistance Plan.~~

(2) Respond to the request for ~~information~~ payment within 90 ~~working~~ days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the ~~insurer's health benefit plan.~~benefit plan of the health insurer.

(3) Accept the Division's right of recovery and the assignment to the Division of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State Medical Assistance Plan.

(4) Respond to any inquiry by the Division or its authorized contractor regarding a claim for payment for any health care item or service that

is submitted not later than three years after the date of the provision of the health care item or service.

(5) Agree not to deny a claim submitted by the Division solely on the basis of the date of submission of the claim, the type of format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

a. The claim is submitted by the Division within the three-year period beginning on the date on which the item or service was furnished; and

b. Any action by the Division to enforce its rights with respect to such claim is commenced within six years of the Division's submission of the claim.

(6) Cooperate with requests by the Division or its authorized contractor to determine a named individual's eligibility or payment information under the benefit plan of the health insurer.

(c) ~~An~~ A health insurer that complies with this section shall not be liable on that account in any civil or criminal actions or proceedings."

SECTION 2. This act becomes effective _____.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

July 24, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Fitzgerald	DHHS/DHSR
Johanna Reese	DOT
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
R. Paul Wilms	NCHBA
Cliff Cauble	Gov Office
Robin Smith	DENR
Don McCorquodale	Manning Fulton
Paul Meyer	NCAcc
Kim Hibbard	NCLM
John Phelps	NCLM
Rob Schofield	NC Policy Watch

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 24, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kay Radford	OSBM
Peggy Mayo	
Jamel Jones	NCPTA
Clyde Boggett	ACMS
Bob Hagett	DOT
Amar Majmundar	DOT
Tracy Little	DOC
Cassandra White	Gov. office
Theodis Beck	DOC
Ashley Walker	AARP
Mary Bethel	AARP

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheera Reid	Daily Bulletin (106)
Todd Barlow	NC ATC
David Punyear	Punyear and Lingle, Greensboro

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, July 24, 2007
10:00 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 179	Actions to Address Medicaid Fraud.	Senator Rand
HB 1113	State Tort Claims/Public Duty Doctrine.	Representative Faison Representative Glazier
HB 1253	Juvenile Code Revisions.	Representative Jones Representative Dickson Representative Haire
HB 1284	Breach/Construction Contract Accrual Date.	Representative Stam
HB 1328	Req. Disclosure/Sex Offenders/Child Custody.	Representative Moore
HB 1374 (SB1264)	Protect Homeowners/Reduce Foreclosure.	Representative Blue Representative Weiss Representative Dickson Representative Glazier

Adjournment.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Wednesday, July 25, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1328** Req. Disclosure/Sex Offenders/Child Custody.

Draft Number:	PCS 60394
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE JUDICIARY I COMMITTEE
(Civil)

July 26, 2007
9 a.m. --Room 1027

MINUTES

The Senate Judiciary Committee met Thursday, July 26 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice Chair R. C. Soles, Member Charlie Albertson, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator Janet Cowell, Senator Ellie Kinnaird, Senator Vernon Malone, Senator Floyd McKissick, Senator Tony Rand, Senator Richard Stevens, and Senator Jerry Tillman. .

Chairman Nesbitt called the meeting to order at 9:13 a.m. and recognized Rep. Blue for House Bill 1374, a bill amending current usury legislation with regard to homeowners and home foreclosure. A Proposed Committee Substitute was passed to committee members. Sen. Albertson moved for adoption of the PCS, its adoption passed unanimously.

Rep. Blue explained that the bill had ample support, including support from the banking industry. He then explained that the bills objectives include improving foreclosure process and reduce loan service that leads to loan default.

After discussion among members about increasing foreclosure percentages in North Carolina, Sen. Tillman moved for favorable report, unfavorable as original bill. Discussion continued. Sen. Brunstetter asked if there were any adverse consequences for the legitimate loan market. Paul Stock, who represents the Banking Association of North Carolina, addressed the committee and said that there would be minimal administrative impact, but that impact was worth the cost in order to "clean up" usurious practices.

The motion for favorable report by Sen. Tillman passed unanimously.

Chairman Nesbitt then recognized Rep. Tillis regarding House Bill 1384, a bill repealing statutory rule against perpetuities applying to trusts. The bill also codifies the law regarding alienation of trusts created in North Carolina.

A proposed committee substitute was distributed to members. Sen. Soles moved for adoption of the PCS, the motion passed unanimously.

Rep. Tillis explained to the committee that 26 states had already repealed laws against perpetuities and that the bill had the support of the Banking Association.

Little discussion ensued regarding the bill. Sen. Brunstetter moved for favorable report, unfavorable as to original bill. The motion passed unanimously.

The next item of business was House Bill 1537, amendments to the Medicaid estate recovery provisions. A proposed committee substitute was distributed to committee members and adopted by a motion by Sen. Soles.

An amendment was offered by Senator Stevens regarding technical corrections in the bill and the amendment passed unanimously. Chairman Nesbitt then explained the bill, which allows the Department of Health and Human services to continue as a 5th Class Creditor; codifies the provisions in the Medicaid hardship waiver process; and amends laws regarding required data sharing by health insurers and the Department of Health and Human Services.

Chairman Nesbitt called on Tracy Hayes, with the North Carolina Attorney General Medicaid Assistance office, and Marjorie Morris, Director of Medicaid Assistance for the State of North Carolina, who explained the bill further.

Sen. McKissick thanked Chairman Nesbitt for his leadership and moved for favorable report. After little more discussion among committee members, Chairman Nesbitt called for discussion outside the committee. Discussion among committee members continued regarding bill definitions and spousal issues. The bill was voted on for favorable report, unfavorable as to original bill. The motion passed unanimously.

Chairman Nesbitt then recognized Reps. Justus and Goforth regarding House Bill 1148, a bill allowing the Department of Juvenile Justice to release identification of juveniles who have escaped custody.

Sen. Soles motioned for adoption of a proposed committee substitute of the bill. The motion passed unanimously. Rep. Goforth encouraged committee members to support the bill noting the safety of both the juveniles and the public around them. Chairman Nesbitt agreed, saying that when youth are on the run they are a danger to both themselves and to others.

Sen. Soles offered an amendment to the bill on page 1, line 12 and 23, deleting "juvenile's name" and substituting the term "juvenile's initials."

The amendment remained without a vote as the committee continued discussion. Chairman Nesbitt recognized Brian Lewis with the Covenant for North Carolina's Children. Mr. Lewis explained to the committee that his organization was concerned that an information trail would continue ten or 15 years after the offender was released. Chairman Nesbitt said offenses are not released. Sen. Brock said giving the name would help law enforcement and Sen. Rand expressed concern about the quality of photographs. Sen. Rand noted that this was for those who have committed a Class A, B, C, D or E felony, also noting the severity of those class crimes.

Sen. Soles asked if his prior amendment could allow for a first name and a last initial. Mr. Lewis said that would be a compromise. Sen. Soles withdrew his first amendment and

offered a second one. The amendment passed unanimously. Sen. Soles then moved for favorable report, unfavorable as to original bill. The motion passed unanimously.

Chairman Nesbitt then called on Rep. Thomas to explain House Bill 1094, a bill increasing penalties for audiovisual piracy. Rep. Thomas explained that audiovisual piracy had economic consequences. Sen. Kinnaird moved for favorable report. Discussion continuing among committee members, Sen. Cowell expressed concern that the change in penalty for the crime, from a prior Class 1 Misdemeanor to a Class 1 Felony and the fine were out of order, the fine too low and the penalty too high.

Sen. Kinnaird's motion for favorable report passed unanimously. The meeting adjourned at 10:48 a.m.

House Bill 1374 3rd Edition, a proposed committee substitute for HB 1374, the Bill Analysis for HB 1374, House Bill 1384 2nd edition, proposed committee substitute for HB 1384, Bill Analysis for the PCS for HB 1384, a proposed committee substitute for House Bill 1537, an amendment to HB 1537, The bill analysis for the PCS to HB 1537, House Bill 1148 2nd edition, a proposed committee substitute for HB 1148, the Bill Analysis for the PCS to HB 1148, Sen. Soles amendment to HB 1148, a second Amendment by Senator Soles, House Bill 1094 and the Bill Analysis for HB 1094 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1374*

Committee Substitute Favorable 5/15/07
Third Edition Engrossed 5/16/07

Short Title: Protect Homeowners/Reduce Foreclosure. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO OVERTURN THE SHEPARD CASE AND AMEND THE LIMITATION REGARDING ACTIONS TO RECOVER FOR USURY; TO OVERTURN THE SKINNER CASE AND AMEND THE LONG-ARM STATUTE TO ALLOW NORTH CAROLINA COURTS TO EXERCISE PERSONAL JURISDICTION OVER CERTAIN NONRESIDENT DEFENDANTS; TO REQUIRE THAT A NOTICE OF FORECLOSURE CONTAIN CERTAIN INFORMATION; AND TO MAKE OTHER AMENDMENTS TO THE LAW GOVERNING HOME LOANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-53 is amended by adding a new subdivision to read:

"(2a) An action to recover the penalty for the financing of usurious points, usurious fees, or other usurious charges accrues at the time of the last payment made on the loan."

SECTION 2. G.S. 1-75.4(6) reads as rewritten:

"(6) Local Property. – In any action which arises out of:

a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or

b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this

State at the time the defendant acquired possession or control over it.

d. A claim related to a loan made in this State or deemed to have been made in this State under G.S. 24-2.1, regardless of the situs of the lender, assignee, or other holder of the loan note and regardless of whether the loan payment or fee is received through a loan servicer, provided that (i) the loan was made to a borrower who is a resident of this State, and (ii) the loan is secured by real property located in this State."

SECTION 3. G.S. 24-2.1 reads as rewritten:

"**§ 24-2.1. Transactions governed by Chapter.**

(a) For purposes of this Chapter, any extension of credit shall be deemed to have been made in this State, and therefore subject to the provisions of this Chapter if the lender offers or agrees in this State to lend to a borrower who is a resident of this State, or if such borrower accepts or makes the offer in this State to borrow, regardless of the situs of the contract as specified therein.

(b) Any solicitation or communication to lend, oral or written, originating outside of this State, but forwarded to and received in this State by a borrower who is a resident of this State, shall be deemed to be an offer or agreement to lend in this State.

(c) Any solicitation or communication to borrow, oral or written, originating within this State, from a borrower who is a resident of this State, but forwarded to, and received by a lender outside of this State, shall be deemed to be an acceptance or offer to borrow in this State.

(d) Any oral or written offer, acceptance, solicitation or communication to lend or borrow, made in this State to, or received in this State from, a borrower who is not a resident of this State shall be subject to the provisions of this Chapter, applicable federal law, law of the situs of the contract, or law of the residence of any such borrower as the parties may elect.

(e) Any person who acquires a right by contract or by assignment to receive payments under a loan made in this State and who benefits from the laws of this State by having the loan secured by real property located in this State is deemed to have consented to the courts of this State having jurisdiction over such person for any claim under this Chapter and for any claim related to the loan instrument.

(f) The provisions of this section shall be severable and if any phrase, clause, sentence or provision is declared to be invalid, the validity of the remainder of this section shall not be affected thereby.

(g) It is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws. Any provision of this section which acts to interfere in the attainment of that public policy shall be of no effect."

SECTION 4. G.S. 45-21.16(c)(7) reads as rewritten:

"(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the

foreclosure should not be allowed to be held. The notice shall contain a ~~statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that his failure to attend the hearing will not affect his right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should he elect to do so.~~all of the following:

a. A statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that his failure to attend the hearing will not affect his right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should he elect to do so.

b. A statement that the trustee, or substitute trustee, is a neutral party and, while holding that position, may not advocate for the secured creditor or for the debtor.

c. A statement that the debtor has the right to apply to a judge of the superior court pursuant to G.S. 45-21.34 to enjoin the sale, upon any legal or equitable ground that the court may deem sufficient prior to the time that the rights of the parties to the sale or resale become fixed, provided that the debtor complies with the requirements of G.S. 45-21.34.

d. A statement that the debtor has the right to appear at the hearing and serve a written response.

e. A statement that if the debtor fails to appear at the hearing, the trustee will ask the clerk for an order to sell the real property being foreclosed.

f. A statement that the debtor has the right to contest the allegations in the notice.

g. A statement that the debtor has the right to seek the advice of an attorney and that free legal services may be available to that debtor by contacting Legal Aid of North Carolina at the then current telephone number of that organization or at such number provided by that organization from time to time."

SECTION 5. Chapter 45 of the General Statutes is amended by adding a new Article to read:

"Article 10.

"Home Loans.

"**§ 45-85. Definitions.**

As used in this Article, the following definitions apply:

(1) Home loan. – A loan secured by a home used, or intended to be used, as a principal dwelling in this State, whether it is real or personal property, and regardless of whether the loan is used to purchase the home or refinance the prior purchase of the home or whether the

proceeds of the loan are used for personal, family, or business purposes.

(2) Servicer. – A person or entity who, under contract with a lender, a trustee for a securitized trust, another servicer, an originator, an investor, or with any other party related to or affiliated with a home mortgage loan, or on its own behalf, receives payments from borrowers for home loans, or taxes and insurance associated with a home loan. A licensed attorney, who in the practice of law, accepts payments related to a loan closing, default, foreclosure, or settlement of a dispute or legal claim related to a loan, shall not be considered a servicer for the purposes of this Article.

"**§ 45-86. Obligation of servicer to handle escrow funds.**

The servicer or lender shall make all payments from the escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that no late penalties are assessed or other negative consequences result regardless of whether the loan is delinquent unless the servicer or lender has a reasonable basis to believe that recovery of these funds will not be possible.

"**§ 45-87. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this Article is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this Article shall nonetheless continue to apply with respect to all other points and fees."

SECTION 6. Sections 4 and 5 of this act become effective January 1, 2008. All other sections of this act are effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1374*
Committee Substitute Favorable 5/15/07
Third Edition Engrossed 5/16/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1374-PCS70605-TC-55

Short Title: Protect Homeowners/Reduce Foreclosure. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO OVERTURN THE SHEPARD CASE AND AMEND THE LIMITATION REGARDING ACTIONS TO RECOVER FOR USURY; TO OVERTURN THE SKINNER CASE AND AMEND THE LONG-ARM STATUTE TO ALLOW NORTH CAROLINA COURTS TO EXERCISE PERSONAL JURISDICTION OVER CERTAIN NONRESIDENT DEFENDANTS; TO REQUIRE THAT A NOTICE OF FORECLOSURE CONTAIN CERTAIN INFORMATION; AND TO PROVIDE FOR MORTGAGE DEBT COLLECTION AND SERVICING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-53(2) reads as rewritten:

"(2) An action to recover the penalty for ~~usury.~~ usury, including an action regarding the financing of usurious points, usurious fees, or other usurious charges; the two-year period shall accrue with each payment made and accepted on the loan."

SECTION 2. G.S. 1-75.4(6) reads as rewritten:

"(6) Local Property. – In any action which arises out of:

a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or

b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it.

d. A claim related to a loan made in this State or deemed to have been made in this State under G.S. 24-2.1, regardless of the situs of the lender, assignee, or other holder of the loan note and regardless of whether the loan payment or fee is received through a loan servicer, provided that: (i) the loan was made to a borrower who is a resident of this State, (ii) the loan is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust on real property situated in this State upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families."

SECTION 3. G.S. 24-2.1 reads as rewritten:

"**§ 24-2.1. Transactions governed by Chapter.**

(a) For purposes of this Chapter, any extension of credit shall be deemed to have been made in this State, and therefore subject to the provisions of this Chapter if the lender offers or agrees in this State to lend to a borrower who is a resident of this State, or if such borrower accepts or makes the offer in this State to borrow, regardless of the situs of the contract as specified therein.

(b) Any solicitation or communication to lend, oral or written, originating outside of this State, but forwarded to and received in this State by a borrower who is a resident of this State, shall be deemed to be an offer or agreement to lend in this State.

(c) Any solicitation or communication to borrow, oral or written, originating within this State, from a borrower who is a resident of this State, but forwarded to, and received by a lender outside of this State, shall be deemed to be an acceptance or offer to borrow in this State.

(d) Any oral or written offer, acceptance, solicitation or communication to lend or borrow, made in this State to, or received in this State from, a borrower who is not a resident of this State shall be subject to the provisions of this Chapter, applicable federal law, law of the situs of the contract, or law of the residence of any such borrower as the parties may elect.

(e) Any person who acquires a right by contract or by assignment to receive payments under a loan made in this State to an individual or individuals who is a resident of this State at the time of the loan and who benefits from the laws of this State by having the loan secured by real property located in this State is deemed to have consented to the courts of this State having jurisdiction over such person for any claim under this Chapter and for any claim related to the loan instrument.

(f) The provisions of this section shall be severable and if any phrase, clause, sentence or provision is declared to be invalid, the validity of the remainder of this section shall not be affected thereby.

(g) It is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws. Any provision of this section which acts to interfere in the attainment of that public policy shall be of no effect."

SECTION 4. G.S. 45-21.16 reads as rewritten:

"**§ 45-21.16. Notice and hearing.**

...

(c) Notice shall be in writing and shall state in a manner reasonably calculated to make the party entitled to notice aware of the following:

...

(5a) The holder has confirmed in writing to the person giving the notice, or if the holder is giving the notice, the holder shall confirm in the notice, that, within 30 days of the date of the notice, the debtor was sent by first-class mail at the debtor's last known address a detailed written statement of the amount of ~~principal and interest~~ principal, interest, and any other fees, expenses, and disbursements that the holder in good faith is claiming to be due ~~claims in good faith is owed~~ as of the date of the written statement, together with a daily interest charge based on the contract rate as of the date of the ~~statement, and the amount of other expenses the holder contends it is owed as of the date of the statement.~~ written statement. Nothing herein is intended to authorize any fees, charges, or methods of charging interest which is not otherwise permitted under contract between the parties and other applicable law.

(5b) To the knowledge of the holder, or the servicer acting on the holder's behalf, whether in the two years preceding the date of the statement any requests for information have been made by the borrower to the servicer pursuant to G.S. 45-88 and, if so, whether such requests have been complied with. If the time limits set forth in G.S. 45-88 for complying with any such requests for information have not yet expired as of the date of the notice, the notice shall so state.

(6) Repealed by Session Laws 1977, c. 359, s. 7.

(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. The notice shall contain ~~a statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that his failure to attend the hearing will not affect his right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should he elect to do so.~~all of the following:

a. A statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that the debtor's failure to attend the

hearing will not affect the debtor's right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should the debtor elect to do so.

b. A statement that the trustee, or substitute trustee, is a neutral party and, while holding that position in the foreclosure proceeding, may not advocate for the secured creditor or for the debtor in the foreclosure proceeding.

c. A statement that the debtor has the right to apply to a judge of the superior court pursuant to G.S. 45-21.34 to enjoin the sale, upon any legal or equitable ground that the court may deem sufficient prior to the time that the rights of the parties to the sale or resale become fixed, provided that the debtor complies with the requirements of G.S. 45-21.34.

d. A statement that the debtor has the right to appear at the hearing and contest the evidence that the clerk is to consider under G.S. 45-21.16(d), and that to authorize the foreclosure the clerk must find the existence of: (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, and (iv) notice to those entitled to notice.

e. A statement that if the debtor fails to appear at the hearing, the trustee will ask the clerk for an order to sell the real property being foreclosed.

f. A statement that the debtor has the right to seek the advice of an attorney and that free legal services may be available to the debtor by contacting Legal Aid of North Carolina or other legal services organizations.

(8) That if the foreclosure sale is consummated, the purchaser will be entitled to possession of the real estate as of the date of delivery of his deed, and that the debtor, if still in possession, can then be evicted.

(8a) The name, address, and telephone number of the trustee or mortgagee.

(9) That the debtor should keep the trustee or mortgagee notified in writing of his address so that he can be mailed copies of the notice of foreclosure setting forth the terms under which the sale will be held, and notice of any postponements or resales.

(10) If the notice of hearing is intended to serve also as a notice of sale, such additional information as is set forth in G.S. 45-21.16A.

(11) That the hearing may be held on a date later than that stated in the notice and that the party will be notified of any change in the hearing date.

(c1) The person giving the notice of hearing, if other than the holder, may rely on the written confirmation received from the holder under ~~subdivision~~ subdivisions (c)(5a) and (c)(5b) of this section and is not liable for inaccuracies in the written confirmation.

~~Any dispute concerning the mailing or accuracy of the written statement described in subdivision (c)(5a) of this section shall not be considered in a hearing under this section.~~

...."

SECTION 5. Chapter 45 of the General Statutes is amended by adding a new Article to read:

"Article 10.

"Mortgage Debt Collection and Servicing.

"**§ 45-85. Definitions.**

As used in this Article, the following definitions apply:

(1) Home loan. – A loan secured by real property located in this State used, or intended to be used, by an individual borrower or individual borrowers in this State as a dwelling, regardless of whether the loan is used to purchase the property or refinance the prior purchase of the property or whether the proceeds of the loan are used for personal, family, or business purposes.

(2) Servicer. – A 'servicer' as defined in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i). A licensed attorney, who in the practice of law or performing as a trustee, accepts payments related to a loan closing, default, foreclosure, or settlement of a dispute or legal claim related to a loan, shall not be considered a servicer for the purposes of this Article.

"**§ 45-86. Assessment of fees; processing of payments; publication of statements.**

(a) A servicer must comply as to every home loan, regardless of whether the loan is considered in default or the borrower is in bankruptcy or the borrower has been in bankruptcy, with the following requirements:

(1) Any fee that is incurred by a servicer shall be both:

a. Assessed within 45 days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within 45 days of the date they are charged by either the attorney or trustee to the servicer.

b. Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address at least 30 days after assessing the fee, provided the servicer shall not be required to take any action in violation of the provisions of the federal bankruptcy code.

(2) All amounts received by a servicer on a home loan at the address where the borrower has been instructed to make payments shall be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has made the full contractual payment and has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if

any payment is received and not credited, or treated as credited, the borrower shall be notified within 10 business days by mail at the borrower's last known address of the disposition of the payment, the reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

(3) Failure to charge the fee or provide the information within the allowable time and in the manner required under subdivision (1) of subsection (a) of this section constitutes a waiver of such fee.

(4) All fees charged by a servicer must be otherwise permitted under applicable law and the contracts between the parties. Nothing herein is intended to permit the application of payments or method of charging interest which is less protective of the borrower than the contracts between the parties and other applicable law.

"**§ 45-87. Obligation of servicer to handle escrow funds.**

Any servicer that exercises the authority to collect escrow amounts on a home loan held or to be held for the borrower for insurance, taxes, and other charges with respect to the property shall collect and make all payments from the escrow account, so as to ensure that no late penalties are assessed or other negative consequences result. The provisions of this section shall apply regardless of whether the loan is delinquent or in default unless the servicer has a reasonable basis to believe that recovery of these funds will not be possible or the loan is more than 90 days in default.

"**§ 45-88. Borrower requests for information.**

The servicer shall make reasonable attempts to comply with a borrower's request for information about the home loan account and to respond to any dispute initiated by the borrower about the loan account, as provided in this section. The servicer shall maintain, until the home loan is paid in full, otherwise satisfied, or sold, written or electronic records of each written request for information regarding a dispute or error involving the borrower's account. Specifically, the servicer is required to do all of the following:

(1) Provide a written statement to the borrower within 10 business days of receipt of a written request from the borrower that includes or otherwise enables the servicer to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient detail to the servicer regarding information sought by the borrower. The borrower is entitled to one such statement in any six-month period free of charge, and additional statements shall be provided if the borrower pays the servicer a reasonable charge for preparing and furnishing the statement not to exceed twenty-five dollars ($25.00) The statement shall include the following information if requested:

a. Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default.

b. The current balance due on the loan, including the principal due, the amount of funds (if any) held in a suspense account, the amount of the escrow balance (if any) known to the servicer, and whether there are any escrow deficiencies or shortages known to the servicer.

c. The identity, address, and other relevant information about the current holder, owner, or assignee of the loan.

d. The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes.

(2) Provide the following information and/or documents within 25 business days of receipt of a written request from the borrower that includes or otherwise enables the servicer to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient detail to the servicer regarding information sought by the borrower:

a. A copy of the original note, or if unavailable, an affidavit of lost note.

b. A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the home loan including escrow account activity and suspense account activity, if any. The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the home loan for the entire two-year time period the servicer shall provide the information going back to the date on which the servicer began servicing the home loan. For purposes of this subsection, the date of the request for the information shall be presumed to be no later than 30 days from the date of the receipt of the request. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the loan, the servicer shall provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the loan up to the date of the request for the information. The borrower is entitled to one such statement in any six-month period free of charge. Additional statements shall be provided if the borrower pays the servicer a reasonable charge for preparing and furnishing the statement not to exceed fifty dollars ($50.00).

(3) Promptly correct errors relating to the allocation of payments, the statement of account, or the payoff balance identified in any notice from the borrower provided in accordance with subdivision (2) of this section, or discovered through the due diligence of the servicer or other means.

"**§ 45-89. Remedies.**

In addition to any equitable remedies and any other remedies at law, any borrower injured by any violation of this Article may bring an action for recovery of actual damages, including reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a home loan may enforce the provisions of this section. With the exception of an action by the Commissioner of Banks or the Attorney General, at least 30 days before a borrower or a borrower's representative institutes a civil action for damages against a servicer for a violation of this Article, the borrower or a borrower's representative shall notify the servicer in writing of any claimed errors or disputes regarding the borrower's home loan that forms the basis of the civil action. The notice must be sent to the address as designated on any of the servicer's bills, statements, invoices, or other written communication, and must enable the servicer to identify the name and loan account of the borrower. For purposes of this section, notice shall not include a complaint or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action, or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be in violation of this Article if the servicer shows by a preponderance of evidence that:

(1) The violation was not intentional or the result of bad faith; and

(2) Within 30 days after discovering or being notified of an error, and prior to the institution of any legal action by the borrower against the servicer under this section, the servicer corrected the error and compensated the borrower for any fees or charges incurred by the borrower as a result of the violation.

"**§ 45-90. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this Article is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this Article shall nonetheless continue to apply with respect to all other points and fees."

SECTION 6. Sections 4 and 5 of this act become effective April 1, 2008. All other sections of this act are effective when it becomes law.

HOUSE BILL 1374:
Protect Homeowners/Reduce Foreclosure

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 26, 2007
Introduced by:	Reps. Blue, Glazier, Dickson, Weiss	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to Third Edition H1347-CCSTC[v5]		

SUMMARY: The PCS for HB 1374:

- ***amends the statute of limitations in cases involving usurious points, fees, or other charges,***
- ***amends the long-arm statute to allow North Carolina courts to exercise personal jurisdiction over certain nonresident defendants,***
- ***amends the Foreclosure law to require that debtors receive notice of certain rights and remedies that may be available to them, and***
- ***creates a new Article in the Mortgage and Deed of Trust law regulating Mortgage Debt Collection and Servicing for home loans.***

[As introduced, this bill was identical to S1264, as introduced by Sen. Nesbitt, which is currently in Senate Judiciary I (Civil).]

BILL ANALYSIS:

Section 1.

This section amends the Civil Procedure law, G.S. 1-53(2), with regard to the two-year statute of limitations to recover penalties for usury by including actions for the financing of usurious points, usurious fees, or other usurious charges. The two-year period would accrue with each payment made and accepted on the loan.

This provision overturns a recent Supreme Court case. In the case of *Shepard v. Ocwen Federal Bank*, 361 N.C. 137 (2006), the North Carolina Supreme Court held that a claim for a usurious origination fee that was financed as part of a second mortgage loan was barred by the two year statute of limitations. The court held that the claim accrued at closing when the origination fee was due and paid. The fact that the plaintiffs chose to finance the fee did not create a claim for a continuing series of wrongs, paid as part of each monthly payment.

Sections 2 and 3.

Section 2 amends G.S. 1-75.4(6), the law governing the grounds upon which a North Carolina court can exercise personal jurisdiction over a nonresident defendant in a claim related to local property. The amendment authorizes jurisdiction in a claim involving a loan that was:

1) made to a North Carolina borrower,

2) incurred by the borrower primarily for personal, family, or household purposes, and

3) secured by real property located in the State upon which there is or is to be located structures designed for occupancy by 1-4 families.

Jurisdiction can be asserted regardless of the location of the lender, assignee, or other holder of the loan note and regardless of whether payments are received through a loan servicer.

Section 3 amends G.S. 24-2.1, the Interest law, to provide that any person who *acquires* the right to receive payments on a loan made in this State to an individual or individuals who is a resident of this State at the time of the loan and that is secured by real property located in this State is deemed to have consented to the exercise of jurisdiction by the courts of this State for any claim related to the loan.

Sections 2 and 3 are intended to overturn the result in the *Skinner* case. In *Skinner v. Preferred Credit,*361 N.C. 114 (2006), the Supreme Court held that North Carolina courts lacked personal jurisdiction over a nonresident trust that had been assigned the right to receive income from several mortgage loans originated in and secured by real property in the State. The trust received the payments from a separate loan servicer, not directly from the North Carolina borrowers, and had no other contacts with the state.

Section 4. This section amends G.S. 45-21.16, relating to foreclosure under power of sale, by adding several items of information that must be provided to the debtor with the notice of hearing. The required information includes:

- The holder's knowledge as to whether borrower made requests to servicer for information in the prior 2 years, and whether such requests were complied with.
- That the debtor need not appear at the hearing if he or she does not intend to contest the default, but that failure to appear does not affect the right to pay the debt and prevent the sale.
- That the trustee is a neutral party and cannot advocate for the creditor or the debtor.
- That the debtor can apply to the court to stop the sale on legal or equitable grounds prior to the time the rights of the parties to the sale become fixed.
- That the debtor has the right to appear at the hearing and contest the allegations in the notice, and the grounds the clerk must find to authorize the foreclosure.
- That if the debtor fails to appear, the trustee will seek an order to sell the property being foreclosed.
- That the debtor has the right to legal advice and how the debtor may obtain free legal advice.

Section 5. This section creates a new Article entitled "Mortgage Debt Collection and Servicing".

Definitions:

Home Loan – loan secured by North Carolina real property and used by individual borrower as a dwelling – regardless of whether loan is for purchase or refinance, or the proceeds are used for personal, family, or business purposes.

Servicer – as defined in the federal Real Estate Settlement Procedures Act, a person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan. A licensed attorney who accepts payments related to loan closings, defaults, foreclosures, or settlement of disputes related to a loan is not considered a servicer.

Assessment of Fees: Servicers must comply with the following for all home loans:

1. Any fee incurred by the servicer must be both:
   - Assessed within 45 days of date the fee was incurred, however attorney or trustee fees and costs as result of foreclosure must be assessed within 45 days of date charged to servicer; and
   - Explained clearly and conspicuously in statement mailed to borrower at least 30 days after assessing fee.
2. Amounts received by servicer at proper address shall be accepted and credited within 1 business day of date received if the borrower has made the full contractual payment and provided sufficient information to credit account. If any payment is not credited, the borrower must be notified within 10 business days by mail of the reason and any actions the borrower must take to make the loan current.
3. The fee is waived if not charged with the allowable time or in manner required.
4. All fees charged must be otherwise permitted by law and the parties' contract.

Obligation of servicer to handle escrow funds: A servicer which collects escrow funds for insurance, taxes, or other charges must collect and make all payments so as to ensure no late penalties are assessed or other negative consequences result. This would apply even if the loan was delinquent or in default, unless the loan is more than 90 days in default or the servicer has a reasonable basis to believe recovery will not be possible.

Borrower request for information: Servicer must maintain written or electronic records of written requests for information regarding disputes or errors in a borrowers account until the loan is paid in full, otherwise satisfied, or sold. The servicer must:

1. Provide within 10 business days of receipt of written request from borrower the following information if requested:

- If account is current, or if not, explanation of default and date of default.
- Current balance due on loan, including principal, funds in suspense account, amount of escrow balance, and any known escrow deficiencies.
- Identity, address and other relevant information about current holder, owner, or assignee of loan.
- Telephone number and mailing address of servicer representative authorized to answer questions and resolve disputes.

Borrower is entitled to receive 1 statement in any 6 month period free of charge, and additional statements for reasonable charge not to exceed $25.

2. Provide within 25 business days of receipt of written request from borrower:

- Copy of the original note.
- Statement identifying and itemizing all fees and charges assessed under the loan transaction, and provides a full payment history. Account history must cover at minimum the 2 year period prior to the date of receipt of the request, or to the date the servicer began servicing the loan, if less than 2 years. If the servicer claims outstanding sums prior to the 2 year period, the history must begin with the month the outstanding sum is owed on.

Borrower is entitled to receive 1 statement in any 6 month period free of charge, and additional statements for reasonable charge not to exceed $50.

3. Promptly correct errors relating to allocation of payments, statement of accounts, or payoff balance in notice provided to the borrower or discovered through the servicer's due diligence.

Remedies: In addition to equitable remedies and other remedies at law:

- Borrowers injured by violation of the Article may bring an action for recovery of actual damages, including reasonable attorney's fees.
- The provisions of the section may be enforced by the Commission of Banks, the Attorney General, or any party to a home loan.
- If a party to a home loan brings a civil action for damages, the borrower must notify the servicer in writing of the error or dispute that forms the basis of the claim at least 30 days prior to instituting the action.
- A servicer will not be in violation of the Article if the servicer shows by a preponderance of the evidence that:

1. the violation was not intentional of the result of bad faith, and

2. within 30 days of discovery or notice of the error and prior to the institution of a legal action, the servicer corrected the error and compensated the borrower for fees and charges incurred as a result of the violation.

The Article contains a severability provision.

EFFECTIVE DATE: Sections 4 and 5 of the act become effective April 1, 2008. The remainder of the act becomes effective when it becomes law.

**This bill summary was substantially contributed to by Karen Cochrane-Brown, Committee Counsel to House Judiciary II.*

H1374e3-SMTC-CCSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1384
Second Edition Engrossed 5/15/07

Short Title: Repeal Rule Against Perpetuities. (Public)

Sponsors: Representatives Glazier, Tillis (Primary Sponsors); Faison and Harrison.

Referred to: Judiciary II.

April 11, 2007

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE STATUTORY RULE AGAINST PERPETUITIES AND CODIFY THE LAW REGARDING THE POWER OF ALIENATION FOR TRUSTS CREATED IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 41 of the General Statutes is repealed.

SECTION 2. Chapter 41 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Perpetuities and Suspension of Power of Alienation.

"**§ 41-23. Perpetuities and suspension of power of alienation.**

(a) A trust is void if it suspends the power of alienation of trust property, as that term is defined in G.S. 36C-1-103, for longer than the permissible period. The permissible period is no later than 21 years after the death of an individual then alive or lives then in being plus a period of 21 years.

(b) If the settlor of a revocable trust, as those terms are defined in G.S. 36C-1-103, has an unlimited power to revoke or amend the trust, the permissible period under subsection (a) of this section is computed from the termination of that power.

(c) If a trust is created by exercise of a power of appointment, the permissible period under subsection (a) of this section is computed from the time the power is exercised if the power is a general power even if the power is only exercisable as a testamentary power. In the case of other powers, the permissible period is computed from the time the power is created, but facts at the time the power is exercised shall be considered in determining whether the power of alienation is suspended beyond a life or lives in being at the time of the creation of the power plus 21 years.

(d) The power of alienation is suspended only when there are no persons in being who, alone or in combination with others, can convey an absolute fee in possession of land, or full ownership of personal property.

(e) Notwithstanding subsection (a) of this section, there is no suspension of the power of alienability by a trust or by equitable interests under a trust if the trustee has the power to sell, either expressed or implied, or if there exists an unlimited power to terminate the trust in one or more persons in being.

(f) This section does not apply to a transfer in trust (i) for charitable purposes, as defined in G.S. 36C-4-405; (ii) to a literary or charitable organization; (iii) to a veterans' memorial organization; (iv) to a cemetery corporation, society, or association; or (v) as part of a pension, retirement, insurance, savings, stock bonus, profit sharing, death, disability, or similar plan established by an employer for the benefit of some or all of its employees for the purpose of accumulating and distributing to such employees the earnings or the principal, or both earnings and principal, of the trust.

(g) This section does not apply to a future interest other than a future interest in trust and, other than as set forth in this section, this section does not modify the common law of the State regarding the power of alienation in this State.

(h) The common law rule against perpetuities is not in force in this State."

SECTION 3. This act becomes effective January 1, 2008, and applies to all trusts and other property interests created before, on, or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1384
Second Edition Engrossed 5/15/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1384-CSTC-50 [v.3]

7/25/2007 9:55:06 PM

Short Title: Repeal Rule Against Perpetuities For Trusts. (Public)

Sponsors:

Referred to:

April 11, 2007

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE STATUTORY RULE AGAINST PERPETUITIES AS IT APPLIES TO TRUSTS CREATED OR ADMINISTERED IN THIS STATE AND CODIFY THE LAW REGARDING THE POWER OF ALIENATION FOR TRUSTS CREATED IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 41 of the General Statutes is amended by adding a new section to read:

"**§ 41-23. Perpetuities and suspension of power of alienation for trusts.**

(a) A trust is void if it suspends the power of alienation of trust property, as that term is defined in G.S. 36C-1-103, for longer than the permissible period. The permissible period is no later than 21 years after the death of an individual then alive or lives then in being plus a period of 21 years.

(b) If the settlor of a revocable trust, as those terms are defined in G.S. 36C-1-103, has an unlimited power to revoke or amend the trust, the permissible period under subsection (a) of this section is computed from the termination of that power.

(c) If a trust is created by exercise of a power of appointment, the permissible period under subsection (a) of this section is computed from the time the power is exercised if the power is a general power even if the power is only exercisable as a testamentary power. In the case of other powers, the permissible period is computed from the time the power is created, but facts at the time the power is exercised shall be considered in determining whether the power of alienation is suspended beyond a life or lives in being at the time of the creation of the power plus 21 years.

(d) The power of alienation is suspended only when there are no persons in being who, alone or in combination with others, can convey an absolute fee in possession of land, or full ownership of personal property.

(e) Notwithstanding subsection (a) of this section, there is no suspension of the power of alienability by a trust or by equitable interests under a trust if the trustee has the power to sell, either expressed or implied, or if there exists an unlimited power to terminate the trust in one or more persons in being.

(f) This section does not apply to a transfer in trust (i) for charitable purposes, as defined in G.S. 36C-4-405; (ii) to a literary or charitable organization; (iii) to a veterans' memorial organization; (iv) to a cemetery corporation, society, or association; or (v) as part of a pension, retirement, insurance, savings, stock bonus, profit sharing, death, disability, or similar plan established by an employer for the benefit of some or all of its employees for the purpose of accumulating and distributing to such employees the earnings or the principal, or both earnings and principal, of the trust.

(g) This section does not apply to a future interest other than a future interest in trust and, other than as set forth in this section, this section does not modify the common law of the State regarding the power of alienation in this State.

(h) The provisions of G.S. 41-15 and the common law rule against perpetuities do not apply to trusts created or administered in this State."

SECTION 2. G.S. 41-15 reads as rewritten:

"**§ 41-15. Statutory rule against perpetuities.**

(a) ~~A~~ Except as otherwise provided in G.S. 41-23, a nonvested property interest is invalid unless:

(1) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) The interest either vests or terminates within 90 years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a ~~trust or other~~ property arrangement, language in a governing instrument:

(1) Seeks to disallow the vesting or termination of any interest ~~or trust~~ beyond,

(2) Seeks to postpone the vesting or termination of any interest ~~or trust~~ until, or

(3) Seeks to operate in effect in any similar fashion upon,

the later of (i) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the ~~trust or other~~ property arrangement or (ii) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the ~~trust or other~~ property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives."

SECTION 3. This act becomes effective when it becomes law, and applies to all trusts created before, on, or after that date.

HOUSE BILL 1384: Repeal Rule Against Perpetuities

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 26, 2007
Introduced by:	Reps. Glazier, Tillis	**Summary by:**	Kara McCraw
Version:	PCS to Second Edition H1384-CSTC		Committee Counsel

SUMMARY: The PCS for House Bill 1384 would repeal the statutory rule against perpetuities as it applies to trusts and would codify the law regarding the alienation of trusts created in North Carolina.

CURRENT LAW: In 1995 the General Assembly adopted Article 2 of Chapter 41, the Uniform Statutory Rule Against Perpetuities (USRAP).

The USRAP includes a two-prong test for the validity of future interests. A nonvested property interest is invalid unless:

- When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive, or
- The interest either vests or terminates within 90 years after its creation.

The USRAP allows for the reformation of a failed interest by the court. Certain interests are excluded from the statutory rule including certain commercial transactions, fiduciary powers related to management of assets, certain interests held by charities or governments, and certain current or deferred benefit plans.

BILL ANALYSIS: Section 1 of the PCS for House Bill 1384 would add a new section to Article 2 of Chapter 41 (Estates) providing for perpetuities and suspension of power of alienation for trusts. Under this new section:

- G.S. 41-15 (Statutory rule against perpetuities) and the common law rule against perpetuities would not apply to trusts.
- A trust would be void is it suspends the power of alienation of trust property for longer than the permissible period. "Property" would be defined as anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
- The permissible period would be:
  - 21 years after the death of an individual then alive, or
  - Lives then in being plus a period of 21 years.
- If the settler of a revocable trust has unlimited power to revoke or amend the trust, the permissible period would be computed from the termination of that power. Settlor would be defined to mean a person, including a testator, who creates, or contributes property to, a trust. Revocable trust would mean a trust revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
- If a trust was created by exercise of a power of appointment, the permissible period would be computed as follows:

- For a general power – from the time the power is exercised.
- For other powers – from the time the power is created, but facts at the time the power is exercised would be considered in determining whether the power of alienation is suspended beyond the permissible period.

- The power of alienation is suspended only when there are no persons in being who can convey an absolute fee in possession of land, or full ownership of property.
- Notwithstanding the perpetuity period established for trusts, if the trustee had the power to sell, either expressed or implied, or if there exists an unlimited power to terminate the trust in a person in being, there is no suspension of the power of alienability by a trust.
- The section does not apply to a transfer in trust:
  - For charitable purposes
  - To a literary or charitable organization
  - To a veterans memorial organization
  - To a cemetery corporation, society, or association
  - As part of an employer established plan for accumulation and distribution of trust proceeds.
- The section only applies to future interests in trusts, and except as set forth does not modify the common law regarding the power of alienation in this state.

Section 2 of the bill makes conforming changes to other sections in Article 2 of Chapter 41.

EFFECTIVE DATE: This act becomes effective when it becomes law, and applies to all trusts created before, on, or after that date.

BACKGROUND: Under federal law, individuals have an exemption from federal wealth transfer taxes up to a certain lifetime value, which was set by the Economic Growth and Tax Relief Reconciliation Act of 2001 at $2 million in 2007 and 2008, and will rise to $3.5 million in 2009. The value of the lifetime exemption may be placed in a trust for later generations, and is not subject to the federal transfer tax until the trust vests. There is no federal limit on the duration of such trusts; however, they are still subject to perpetuities laws in the state in which the trust is established. Under current North Carolina law, trusts must vest or terminate within 90 years.

Currently, the following states have modified or abolished the rule against perpetuities to permit perpetual trusts: Alaska, Arizona, Colorado, Delaware, Florida, Idaho, Illinois, Maine, Maryland, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Rhode Island, Pennsylvania, South Dakota, Utah, Virginia, Wisconsin, and Wyoming.

The remaining states have either retained the traditional rule against perpetuities or have adopted the USRAP.

This summary was contributed to by Heather Fennel, Staff Counsel, and Bao Nguyen and Jeff Wolfe, Legal Interns.

H1384e2-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1537
PROPOSED SENATE COMMITTEE SUBSTITUTE H1537-CSST-93 [v.3]

7/26/2007 8:55:49 AM

Short Title: Medicaid Harship/Estate Recovery/Data Share. (Public)

Sponsors:

Referred to:

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE MEDICAID ESTATE RECOVERY LAW; TO AMEND THE LAW RESPECTING DATA SHARING BY HEALTH INSURERS WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE; AND TO ENACT A PROCEDURE FOR THE WAIVER OF THE MEDICAID TRANSFER OF ASSETS PENALTY DUE TO UNDUE HARDSHIP.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 108A-70.5, as enacted by Section 10.21C. of S.L. 2005-276, and as amended by Section 16 of S.L. 2005-345, and as amended by Section 10.9B of S.L. 2006-66, and as further amended by Section 10 of S.L. 2007-145, reads as rewritten:

"**§ 108A-70.5. Medicaid Estate Recovery Plan.**

(a) There is established in the Department of Health and Human Services, the Medicaid Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of ~~1993.~~1993, to recover from the estates of recipients of medical assistance an equitable amount of the State and federal shares of the cost paid for the recipient. The Department shall administer the program in accordance with applicable federal law and regulations, including those under Title XIX of the Social Security Act, 42 U.S.C. § 1396(p). ~~To the extent allowed by section 1396(p) of Title XIX of the Social Security Act, the Department may impose liens against real property, including the home, of a recipient of medical assistance. The Department shall file any liens imposed under this section in the court where the property is located in the same manner as for any other lien under North Carolina law.~~

(b) As used in this section:

(1) "Medical assistance" means medical care services paid for by the North Carolina Medicaid Program on behalf of the recipient:

a. If the recipient of any age is receiving medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be expected to be discharged to return home; or

b. If the recipient is 55 years of age or older and is receiving these medical care services, including related hospital care and prescription drugs, for nursing facility services, personal care services, or home- and community-based services. ~~one or more of the following medical care services:~~

~~1. Nursing facility services.~~
~~2. Home and community-based services.~~
~~3. Hospital care and prescription drugs related to nursing facility services or home and community based services.~~
~~4. Personal care services.~~
~~5. Medicare premiums.~~
~~6. Private duty nursing.~~
~~7. Home health aide services.~~
~~8. Home health therapy.~~
~~9. Speech pathology services.~~

(2) "Estate" means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1.

~~(3) "Home" means property in which a recipient has, or had immediately before or at the time of the recipient's death, an ownership interest or legal title to, consisting of the recipient's dwelling and the land used and operated in connection with the dwelling.~~

(c) The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. ~~To the extent that allowable Medicaid claims are not satisfied as a result of the execution of any liens held by the Department, the~~The Department is a fifth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other fifth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

(d) The Department of Health and Human Services shall adopt rules pursuant to Chapter 150B of the General Statutes to implement the ~~Plan~~ Plan, including rules to waive whole or partial recovery when this recovery would be inequitable because it would work an undue hardship or because it would not be administratively cost-effective and rules to ensure that all recipients are notified that their estates are subject to recovery at the time they become eligible to receive medical assistance.

~~(e) Regarding trusts that contain the assets of an individual who is disabled as defined in Title 19 of Section 1014(a)(3) of the Social Security Act, as amended, if the trust is established and managed by a nonprofit association, to the extent that amounts~~

~~remaining in the beneficiary's account upon the death of the beneficiary are not retained by the nonprofit association, the trust pays to the Department from these remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the North Carolina Medicaid Program.~~"

SECTION 1.(b) G.S. 108A-70.6, G.S. 108A-70.7, G.S. 108A-70.8, and G.S. 108A-70.9, as enacted by Section 10.21C of S.L. 2005-276, and as amended by Section 16 of S.L. 2005-345, and as amended by Section 10.9B of S.L. 2006-66, and as further amended by Section 10 of S.L. 2007-145, are repealed.

SECTION 2. G.S. 108A-55.4 reads as rewritten:

"**§ 108A-55.4. Insurers to provide certain information to Department of Health and Human Services.**

(a) As used in this section, the terms:

(1) "Department" means the Department of Health and Human Services.

(2) "Division" means the Division of Medical Assistance of the Department of Health and Human Services.

(3) "Health insurer" includes self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, [29 USC Section 1167(1)]), service benefit plans, managed care organizations, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service as a condition of doing business in the State.

(4) "Medical assistance" means medical assistance benefits provided under the State Medical Assistance Plan.

(5) 'Subscriber' means the policyholder or covered person of the insurance.

(6) 'Applicant' means an applicant or former applicant of medical assistance benefits.

(7) 'Recipient' means a present or former recipient of medical assistance benefits.

(8) 'Request' means any inquiry by the Department or Division for the purpose of determining the existence of insurance where the Department or Division may have expended public assistance benefits.

(b) Health insurers, and pharmacy benefit managers regulated as third-party administrators under Article 56 of Chapter 58 of the General Statutes, shall provide, with respect to ~~individuals who are eligible for, or are provided, medical assistance,~~a subscriber upon request of the ~~Division,~~Division or its authorized contractor, information to determine during what period the individual or the individual's spouse or dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the subscriber's name, address, identification number, social security number, date of birth and identifying number of the plan in a manner prescribed by the ~~Division.~~Division or its authorized contractor. Notwithstanding any other provision of law, every health insurer ~~issuing a health benefit plan~~ shall provide, not more frequently than twelve times in a year and at no cost, to the Department of Health and Human Services, Division of Medical

Assistance, or the Department's or Division's authorized contractor, upon its request, ~~information, including automated data matches conducted under the direction of the Department of Health and Human Services, Division of Medical Assistance,~~ information as necessary ~~to~~ so that the Division may (i) identify ~~individuals~~ applicants or recipients who may also be subscribers covered under the ~~insurer's health~~ benefit plans of the health insurer; ~~who are also recipients of medical assistance;~~ (ii) determine the period during which the ~~individual or the individual's spouses~~ individual, the individual's spouse, or the individual's dependents may be or may have been covered by the health benefit plan; and (iii) determine the nature of the coverage. Notwithstanding G.S. 108A-55.4(b)(5), a health insurer is obligated to reimburse the Department only if the insurer has a contractual obligation to make payment for the covered service or item. To facilitate the Division or its authorized contractor in obtaining this and other related information, every health insurer shall:

(1) Cooperate with the Division to determine whether a named individual who is a recipient of medical assistance may be covered under the insurer's health benefit plan and eligible to receive benefits under the health benefit plan for services provided under the State Medical Assistance Plan.

(2) Respond to the request for ~~information~~ payment within 90 working days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the ~~insurer's health benefit plan.~~ benefit plan of the health insurer.

(3) Accept the Division's right of recovery and the assignment to the Division of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State Medical Assistance Plan.

(4) Respond to any inquiry by the Division or its authorized contractor regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service.

(5) Agree not to deny a claim submitted by the Division solely on the basis of the date of submission of the claim, the type of format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

a. The claim is submitted by the Division within the three-year period beginning on the date on which the item or service was furnished; and

b. Any action by the Division to enforce its rights with respect to such claim is commenced within six years of the Division's submission of the claim.

(c) ~~An~~ A health insurer that complies with this section shall not be liable on that account in any civil or criminal actions or proceedings."

SECTION 3.(a) Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-58.2. Waiver of transfer of assets penalty due to undue hardship.**

(a) Prior to imposition of a period of ineligibility for long-term care services because of an asset transfer, also known as a penalty period, the county department of social services shall notify the individual of the individual's right to request a waiver of the penalty period because it will cause an undue hardship to the individual. The Director of the county department of social services or the Director's designee shall grant a waiver of the penalty period due to undue hardship if the individual meets the conditions set forth in subsection (e) of this section. As used in this section, "long term care services" are those services described in 42 U.S.C. 1396p(c)(1)(C)(i) and (ii).

(b) When a Medicaid applicant who is requesting Medicaid to pay for institutional care requests a waiver of a penalty period due to undue hardship, the determination of whether to waive the penalty period shall be processed as part of the Medicaid application and is subject to the application processing standards set forth in 10A NCAC 21B .0203.

(c) When an ongoing Medicaid recipient applies for institutional care or is receiving Medicaid payment for institutional care receives the notice described in subsection (a) of this section, the recipient has 12 calendar days from the date of the notice to request a waiver of the penalty due to undue hardship. The following are the procedures for processing the waiver request:

(1) Within 5 work days of receipt of a request for a waiver of the transfer of assets penalty, the county department of social services shall notify the individual in writing of the information and documentation necessary to determine if the requirements for approving the undue hardship waiver are met.

(2) The individual shall have 12 calendar days from the date of the notice specified in Subdivision (1) of this subsection to provide the necessary information and documentation to establish the undue hardship.

(3) If at the end of the first 12 calendar day period the necessary information and documentation has not been received by the county department of social services, the county department of social services shall again notify the individual of the necessary information and documentation. The individual shall be given an additional 12 calendar days to provide the information and documentation.

(4) If the individual fails to request the undue hardship waiver within 12 calendar days from the date of the notice described in subsection (a) of this section, the county department of social services shall impose the transfer of assets penalty in accordance with notice requirements in G.S.108A-79.

(5) If by the end of the 12 calendar days from the notice described in Subdivision (3) of this subsection, the necessary information and documentation has not been received by the county department of social services, the county department of social services shall deny the

request for waiver of the penalty for undue hardship and notify the individual of the denial in accordance with G.S. 108A-79.

(6) If by the end of the time allowed under Subdivisions (2) and (3) of this subsection the county department of social services has received the necessary information and documentation, the county department of social services shall make a determination of whether the imposition of the penalty period would cause an undue hardship to the individual. The county department of social services shall complete the determination and notify the individual, pursuant to subsection (g) of this section, of whether the imposition of the penalty period will be waived due to undue hardship within 12 calendar days of the receipt of the necessary information and documentation.

(7) If as part of the determination described in Subdivision (6) of this subsection the county department of social services identifies the need for additional information and documentation, it shall notify the individual in writing of that information and documentation. This notice shall initiate a new period of time for the individual to provide the information and documentation as set forth in Subdivisions (2) and (3) of this subsection. Within 12 calendar days of the receipt of the additional information and documentation, the county department of social services shall complete the determination and notify the individual, pursuant to subsection (g) of this section, of whether the imposition of the penalty period will be waived due to undue hardship.

(d) As required by 42 U.S.C. 1396p(c)(2)(D), the facility in which an institutionalized individual is residing may request an undue hardship waiver on behalf of the institutionalized individual with the written consent of the individual or the personal representative of the individual. A facility applying for a waiver for an individual residing in the facility shall adhere to the requirements of this section but shall not be required to advance the costs of acquiring an attorney to aid the institutionalized individual.

(e) Except as provided for in subsection (f) of this section undue hardship exists if the imposition of the penalty period would deprive the individual of medical care, such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life. The individual must provide the information and documentation necessary to demonstrate to the Director of the county department of social services or the Director's designee that:

(1) The individual currently has no alternative income or resources available to provide the medical care or food, clothing, shelter, or other necessities of life that the individual would be deprived of due to the imposition of the penalty; and

(2) The individual or some other person acting on the individual's behalf is making a good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset, which may include:

a. Seeking the advice of an attorney and pursuing legal or equitable remedies such as asset freezing, assignment, or injunction; or seeking modification, avoidance or nullification of a financial instrument, promissory note, loan, mortgage or other property agreement, or other similar transfer agreement; and

b. Cooperating with any attempt to recover the transferred asset or the fair market value of the transferred asset.

(3) The following definitions shall apply to subsection (e) of this section..

a. "Health or life would be endangered" means a medical doctor with knowledge of the individual's medical condition certifies in writing that in his or her professional opinion, the individual will be in danger of death or the individual's health will suffer irreparable harm if a penalty period is imposed.

b. "Other necessities of life" includes basic, life sustaining utilities, including water, heat, electricity, phone, and other items or activities that without which the individual's health or life would be endangered.

c. "Income" means all income of the individual and the community spouse less a protected amount for the community spouse equal to the minimum monthly maintenance needs allowance as determined under 42 U.S.C. 1396r-5(d)(3)(A)(ii), including in all circumstances the excess shelter allowance described under 42 U.S.C. 1396r-5(d)(3)ii, without regard to any adjustment that would be made under 42 U.S.C. 1396r-5(e), plus fifty percent (50%) of such income in excess of the protected amount.

d. "Resources" means all resources of the individual and of the community spouse except the homesite in which the individual or community spouse has an equity interest not exceeding five hundred thousand dollars ($500,000), a motor vehicle in which the individual or community spouse has an equity interest not exceeding thirty thousand dollars ($30,000), personal property, and, in the case of a community spouse, a portion of such other resources in an amount equal to the community spouse resource allowance as defined by 42 U.S.C. 1396r-5(f)(2), provided that such amount shall not exceed sixty percent (60%) of the maximum community spouse resource allowance as defined by 42 U.S.C. 1396r-5(f)(2)(A)(ii). For purposes of this subparagraph, "homesite" means the principal place of residence of the individual or the community spouse in which the individual or community spouse has an equity interest.

(f) An undue hardship shall not exist when the application of a transfer of assets penalty merely causes the individual an inconvenience or restricts the individual's lifestyle.

(g) If the Director of the county department of social services or the Director's designee determines that:

(1) An undue hardship exists, the county department of social services shall waive the penalty period and notify the individual of approval of the waiver of the penalty in accordance with G.S. 108A-79.

(2) An undue hardship does not exist, the county department of social services shall deny the request for the waiver of the penalty and notify the individual of denial of the waiver request in accordance with G.S. 108A-79.

(h) During a penalty period that has been waived because of undue hardship, acquisition by the individual of new or increased income or resources shall be treated as a change in situation and evaluated pursuant to the rules adopted by the Department of Health and Human Services.

(i) While the determination on a request for a waiver of the penalty period due to undue hardship is pending, Medicaid shall not make payments for nursing facility services or intermediate care facility for the mentally retarded services to hold a bed for the individual, as described in 42 U.S.C. 1396p(c)(2)(D). However, if the individual is institutionalized and receiving Medicaid payment for services, Medicaid will maintain the same level of services until the last day of the month after the latter of the following:

(1) Expiration of the ten workday period following the notice required by G.S. 108A-79, or

(2) The date of the decision of a local appeal hearing described in G.S. 108A-79 is issued if the individual requests an appeal of the imposition of a transfer of assets penalty period within the ten workday period described in Subdivision (1) of subsection (i) of this Section."

SECTION 3.(b) Notwithstanding G.S. 150B-21.3(b1), 10A NCAC 21B .0314, adopted by the Department of Health and Human Services on January 19, 2007, and approved by the Rules Review Commission on March 15, 2007, is disapproved.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 8

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1537 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) Stevens
Sen.)

moves to amend the bill on page 3, line 25

( ) WHICH CHANGES THE TITLE

by deleting the phrase "of the insurance" and substituting the phrase "under the insurance policy";

and on page 4, lines 9-11 by rewriting those lines to read: "the health benefit plan; and (iii) determine the nature of the coverage.";

and on page 4, line 32 by inserting the phrase "Notwithstanding subsection (d) of this section," at the beginning of that line;

and on page 4, line 43 by inserting after that line: "(d) A health insurer is obligated to reimburse the Department only if the insurer has a contractual obligation to make payment for the covered service or item.";

and on page 7, line 22 by deleting "42 U.S.C. 1396r-5(d)(3)(A)(ii)" and substituting "42 U.S.C. 1396r-5(d)";

and on page 7, line 24 deleting "42 U.S.C. 1396r-5(d)(3)ii" and Substituting "42 U.S.C. 1396r-5(d)(3)(A)(ii)".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1537:
Medicaid Hardship/Estate Recovery/Data Share

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 25, 2007
Introduced by:	Rep. Ross	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1537-CSST-93		Committee Counsel

SUMMARY: ***The proposed committee substitute would do all of the following:***

1. ***Amend the Medicaid estate recovery provisions to allow the Department of Health Human Services to continue as a 5th class creditor.***
2. ***Codify the provisions setting forth the Medicaid hardship waiver process.***
3. ***Amend the law regarding required data sharing by health insurers and the Department of Health and Human Services.***

Section 1. Medicaid Estate Recovery.

CURRENT LAW:

S.L. 2005-276, Section 10.21C, amended the Medicaid Estate Recovery Plan to include liens on real property. The provision amended G.S. 108A-70.5 and added four new sections to Chapter 108 of the General Statutes. The four new sections are as follows: 1) G.S. 108A-70.6 pertains to the postponement of estate recovery in cases of undue hardship, 2) G.S. 108A-70.7 provides direction when estate recovery is not cost effective, 3) G.S. 108A-70.8 added a notice of estate recovery, and 4) G.S. 108A-70.9 required county departments of social services to provide information and assistance. Specific changes are as follows:

- Provides that, to the extent allowed by Title XIX of the Social Security Act, the Department of Health and Human Services may impose liens against real property, including the home of a recipient of medical assistance, and requires the Department to file any liens imposed in the court where the property is located and in the same manner as for any other lien.
    - Specifies that "medical assistance" includes: medical care services paid by Medicaid to a recipient of any age that is receiving care as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and cannot reasonably be expected to be discharged; and an expanded a detailed list of Medicaid services subject to estate recovery that are received by recipients 55 years of age and older. These services include: nursing facility services, home and community-based services, hospital and prescription drugs related to nursing facility and home and community-based services, personal care services, Medicare premiums, private duty nursing, home health aide services, home health therapy, and speech pathology services.
    - The amendments to G.S. 108A-70.5 also include the definition of "home" which is defined as the property to which a recipient has, or had immediately before or at the time of the recipient's death, an ownership interest or legal title to, consisting of the recipient's dwelling and the land used and operated in connection with the dwelling.
- Allows the Department to postpone or waive estate recovery in cases of undue hardship to a recipient's heir or beneficiary. Undue hardship exists in the following situations:
    - The property subject to the lien has a tax value of equal to or less than $30,000.
    - The property is the sole source of income for the heir or beneficiary and losing the property would drop his or her income to below 100% of the federal poverty level.
    - The sale of the property would be required to satisfy the claim and the following conditions are all met: the heir or beneficiary resided continuously in the decedent's home for at least 24 months prior to death and it is the principal place of residence, and the heir or beneficiary has annual

gross income of no more than 150% of the federal poverty level, and the heir or beneficiary owns no other real property, and owns no more than $30,000 in other assets.

- Directs the Department to waive claims or liens if the amount of Medicaid payments for service and benefits subject to recovery is less than $8,000, or assets subject to claim or lien are less than $5,000.
- Requires the Department to provide each applicant for medical assistance written notice that the receipt of medical assistance may result in a Medicaid claim or lien and that the Department may seek a lien against the real property of a recipient of any age before or after the recipient's death. It also requires notice to explain the hardship conditions under which estate recovery may be postponed or waive.
- Provides that the Department may require the county department of social services (DSS) administering medical assistance to gather and provide the Department with information and administrative or legal assistance needed to recover medical assistance and requires the Department to pay the county (DSS) an amount equal to 20% of the nonfederal share of recovery collected.

This section was to become effective January 1, 2006, and was to apply to recipients of medical assistance on or after that date. However there have been a number of effective date changes. S.L. 2005-345, Section 16, delayed the effective date of the section to July 1, 2006. S.L. 2006-66, Section 10.9B, delayed the effective date of the section to July 1, 2007. Most recently, S.L. 2007-145, Section 10, delayed the effective date of the section from, to August 1, 2007, and specified that it applies to recipients of medical assistance on "and" after that date.

BILL ANALYSIS: Section 1 of the pcs would repeal the all of the extended effective dates and the underlying changes, thereby eliminating the lien provisions, and then amend the current law in the following ways:

- Specifying that estate recovery is to recover from estates of recipients of medical assistance for an equitable amount of the State and federal shares of the costs paid on behalf of the recipient.
- Grant authority to DHHS to adopt rules to waive in whole or in part recovery when the recovery would be inequitable because it would work an undue hardship or because it would not be cost effective.

BACKGROUND: Since the effective date of S.L. 2005-276, Section 10.21C, has been delayed to August 1, 2007. The Division of Medical Assistance (DMA), Department of Health and Human Services has been operating under the provisions that were in place prior to 2005.

The information below was supplied by staff of the Division of Medical Assistance and is intended to provide summary information on current Medicaid estate recovery procedures.

The Division of Medical Assistance/Third Party Recovery (TPR) is a 5th class creditor. As such, any claim that TPR has against the estate assets of a Medicaid recipient/decedent would be addressed after taxes, administrative costs of the estate, any liens or mortgages, [limited] funeral expenses, and after any judgments that are docketed prior to the Department's claim. A brief summary of the estate recovery process is as follows:

1. **Estate Opened (i.e., probated) with the Estates Division of the Clerk of Superior Court**: An invoice is generated by the Division's fiscal agent, EDS, based on the criteria for estate recovery that is set forth in Section 108A-70.5. A report of these invoices is received by DMA/TPR. So, it is established that an estate has been opened, TPR files the claim with the Estates Division and opens a case in our office. At the same time TPR is also communicating with the appropriate local DSS regarding whether the Medicaid recipient had assets to which we would lay claim. At this point, an array of scenarios may occur including: requests for hardship may be received; requests for more information from the relevant involved parties (e.g., executors, administrators, attorneys); request for settlement negotiations, etc. The specific steps involved in any one of these scenarios will proceed until such time as the estate is settled. Please note that TPR case managers do not negotiate claims/settlements.
2. **Estate Unopened (i.e., not probated):** An invoice is still generated by the Division's fiscal agent, EDS, based on the criteria for estate recovery that is set forth in Section 108A-70.5. A report of these invoices is received by DMA/TPR. At this point DMA/TPR cannot establish that an estate has been opened for the Medicaid recipient so TPR contacts the appropriate local DSS in order to obtain information on the recipient's representative and whether there are assets to which DMA/TPR could lay claim. Now, if there are no assets then TPR will cease efforts to initiate recovery. If there are assets, a case is opened in our office and a certified letter is sent to the Medicaid recipient's/decedent's representative explaining that due to assets identified, the estate must be probated. In the instance where a representative cannot probate the estate, TPR will seek intervention by the Public Administrator. At this point, an array of scenarios may occur including: requests for hardship may be received; requests for more information from the relevant involved parties (e.g., executors, administrators, attorneys); request for settlement negotiations, etc. The specific steps involved in any one of these scenarios will proceed until such time as the estate is settled. Please note that TPR case managers do not negotiate claims/settlements.

Section 2. Data Sharing.

CURRENT LAW: G.S. 108A-55.4, Insurers to provide certain information to Department of Health and Human Services, was enacted as part of the budget in 2006. Beginning January 1, 2007, health insurers and pharmacy benefit managers regulated as third-party administrators under Article 56 of Chapter 58 must provide certain information to the North Carolina Department of Health and Human Services, including:

- Name of individuals covered by the health insurer or pharmacy benefits manager.
- Address
- Identifying number of the plan

The information is to be supplied at least 12 times per year at no cost to the Department.

The Division of Medical Assistance (Division) within the Department of Health and Human Services (Department) is to use that information as necessary to:

1. Identify individuals covered under the insurer's health benefit plans who are also recipients of medical assistance
2. Determine the period during which the individual or the individual's spouses or the individual's dependents may be or may have been covered by the health benefit plan.
3. Determine the nature of the coverage.

Every health insurer is to cooperate with the Division, respond to request for information within 90 working days, accept the Division's right of recovery, respond to an inquiry submitted not later than 3 years after the date of the provision of the health care item or service, and comply certain provisions regarding payment of claims.

BILL ANALYSIS: The pcs would change the existing G.S. 108A-55.4 in the following ways:

- Add several definitions:
  - **'Subscriber'** means the policyholder or covered person of the insurance.
  - **'Applicant'** means an applicant or former applicant of medical assistance benefits.
  - **'Recipient'** means a present or former recipient of medical assistance benefits.
  - **'Request'** means any inquiry by the Department or Division for the purpose of determining the existence of insurance where the Department or Division may have expended public assistance benefits or the enrollment of a child in a private health plan pursuant to an order of medical support in a child support case.
- Allow the information to be provided to the Division **or its authorized contractor.**
- Repeal the current language requiring cooperation, and replace it with new language requiring cooperation with the Division or its authorized contractor to determine an individual's eligibility or payment information under the benefit plan of the health insurer.

Section 3. Medicaid Hardship.

CURRENT LAW: G.S. 108A-58 provides that an otherwise eligible person who, while receiving medical assistance benefits or during the time period mandated by federal law, sells, gives, assigns or transfers countable real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits shall be ineligible to receive medical assistance. Any such transfer of property will be presumed to have been made for the purpose of retaining or establishing medical assistance benefits unless valuable consideration equal to the fair market value is received.

A person who transfers property for the purpose of retaining or establishing eligibility for medical assistance benefits shall be ineligible to receive the benefits until one of the following occurs:

1. An amount equal to the uncompensated value of the property has been expended for the person's maintenance and support, including medical expenses. Often referred to as 'spend down.'
2. The period of time required under section 1917(c) of the Social Security Act passes.

The presumption that the transfer for less than fair market value was for the purpose of retaining or establishing medical assistance benefits may be overcome by establishing by the greater weight of the evidence that the transfer was exclusively for some other purpose other than retaining or establishing medical assistance benefits.

G.S. 108A-79 provides the appeal process for a public assistance applicant or recipient.

The federal Deficit Reduction Act of 2005 required changes to Medicaid Asset Transfer Rules including all of the following:

- Lengthening of look-back periods and a change in the beginning date for period of eligibility.
- Disclosure and treatment of annuities.
- Application of 'income-first' rule in applying community spouse's income before assets in providing support of community spouse.
- Disqualification for long-term care assistance for individuals with substantial home equity.
- Enforceability of continuing care retirement communities (CCRC) and life care community admission contracts.
- Reforms of Medicaid asset transfer rules.

BILL ANALYSIS:

Section 1 amends Part 6 of Article 2 of Chapter 108A by adding a new section regarding the Medicaid waiver of transfer of assets penalty due to hardship that does the following:

Notice of the Right to Request a Waiver - Prior to the imposition of a period of ineligibility for long-term care services because of an asset transfer (penalty period), the county department of social services (DSS) must notify the individual of their right to request a waiver of the penalty period because it will cause an undue hardship.

Process for Medicaid Applicant - The determination of whether to waive the penalty period must be processed as part of the Medicaid application and subject to application processing standards set forth in the administrative rules when a waiver of penalty period due to undue hardship is requested by a Medicaid applicant requesting Medicaid pay for institutional care.

Process for Medicaid Recipient - When an ongoing Medicaid recipient applies for institutional care, or is receiving Medicaid payment for institutional care, receives notice of the right to request a waiver of the penalty period because it will cause and undue hardship, the recipient has 12 calendar days from the date of the notice to request a waiver. The process for the waiver request is as follows:

- 5 *work* days from receipt of a request for waiver, the county DSS must notify the individual in writing of the information and documentation necessary for approving the waiver.
- 12 calendar days from the date of the notice above, the individual must provide the necessary information and documentation to establish the undue hardship.
- At the end of the first 12 calendar day period, if the necessary information and documentation has not been received by the county DSS, the DSS must notify the individual of the necessary information and documentation and the individual will be given an additional 12 calendar days to provide information.
- If the individual fails to request a waiver within 12 calendar days, the county DSS must impose the transfer of assets penalty in accordance with G.S. 108A-79.
- By the end of the second 12 calendar day notice, if the necessary information and documentation has not been received by the county DSS, the DSS will deny the request for waiver and notify the individual of the denial in accordance with G.S. 108A-79.
- The county DSS shall make a determination of whether the imposition of the penalty period would cause an undue hardship to the individual if the DSS receives the necessary information and documentation within the specified time frames. The county DSS must complete the determination and notify the individual, pursuant to G.S. 108A-58.2(g), that: 1) an undue hardship exists the waiver is approved, or 2) an undue hardship does not exist and the request for a waiver has been denied. During the determination process, if the county DSS identifies the need for additional information and documentation, the individual must be notified in writing given a new period of time to provide the information.

Under G.S. 108A-58.2(d) a facility in which an institutionalized individual is residing may request an undue hardship waiver on behalf of the individual with the written consent of the individual or the personal representative of the individual.

G.S. 108A-58.29(i) provides that while the determination on a request for a waiver is pending, Medicaid is prevented from making payments for nursing facility services or intermediate care facility for the mentally retarded services to hold a bed for the individual. If an individual is institutionalized and receiving Medicaid payment for services, Medicaid will maintain the same level of services until the last day of the month after the later of the expiration of the ten day workday period following the notice required by G.S. 108A-79, or the date

the decision of a local appeal hearing described in G.S. 108A-79 is issued if the individual requests an appeal, whichever comes later.

Undue hardship – G.S. 108A-58.29(e) provides that **undue hardship exists if the imposition of the penalty period would deprive the individual of medical care, such that health or life would be endangered, or of food, clothing, shelter, or other necessities of life.** The individual must provide the information and documentation necessary to demonstrate to the Director of the county DSS, or designee, that:

- The individual currently does has not alternative source of income or resources available to provide the medical care or food, clothing, shelter or other necessities of life that the individual would be deprived of due to the imposition of the penalty; and
- The individual or person acting on their behalf, is making a good faith effort to pursue all reasonable means to recover the transferred asset, or the fair market value of it, which may include seeking the advice of an attorney and pursuing legal remedies and cooperating with any attempt to recover the transferred asset or the fair market value.

G.S. 108A-58.29(e)3. provides definitions for the following:

- **"health or life would be endangered"** – means a medical doctor with knowledge of the individual's medical condition certifies in writing that in his or her professional opinion, the individual will be in danger of death or the individual's health will suffer irreparable harm if a penalty period is imposed.
- **"other ne cessities of life"** -- includes basic, life sustaining utilities, including water, heat, electricity, phone, and other items or activities that without which the individual's health or life would be endangered.
- **"income"** – means all income of the individual and to the community spouse less an amount for the community spouse equal to the minimum monthly maintenance needs allowance as determined under 42 U.S.C. 1396r-5(d)(3)(A)(ii) without regard to any adjustment that would be made under 42 U.S.C. 1396r-5(e3) plus fifty percent (50%) of other income in excess of the minimum monthly maintenance needs allowance as described in this section.
- **"resources"** -- means all resources of the individual and of the community spouse except for the excluded home, the equity of a motor vehicle up to $30,000, other personal property, and an amount of other resources for the community spouse equal to sixty percent (60%) of the community spouse resource allowance as determined under 42 U.S.C. 1396r-5(f)(2)(A) which is not less than the amount specified in 42 U.S.C. 1396r-5(f)(2)(A)(i) or greater than sixty percent (60%) of the amount specified in 42 U.S.C. 1396r-5(f)(2)(A)(ii).

G.S. 108A-58.29(f) specifies that an undue hardship does not exist when the application of a transfer of assets penalty merely causes the individual an inconvenience or restricts his or her lifestyle.

G.S. 108A-58.29(h) provides that during a penalty period that has been waived due to undue hardship, an acquisition by the individual of new or increased income or resources will be treated as a change in situation and evaluated pursuant to rules adopted by the Department of Health and Human Services.

BACKGROUND: In response to the Deficit Reduction Act of 2005, the Department of Health and Human Services proposed rules. Below is a brief history provided by the Rules Review Commission.

Prior to January 18, 2007 - Division of Medical Assistance (DMA) submitted the Medicaid Waiver of Transfer of Assets rule as a temporary rule.

January 18, 2007 - Rules Review Commission (RRC) found that the findings of need for the rule did not meet the criteria for a temporary rule listed in G.S. 150B-21.1(a) because it was not shown that adherence to the notice of hearing requirements of G.S. 150B-21.2 would be contrary to the public interest. Interestingly enough, by this time DMA had in fact met those hearing requirements, but no one from the agency at the meeting was aware of this.

January 20, 2007 - DMA submitted the permanent version of the rule to RRC.

February 15, 2007- RRC objected to the permanent rule because of some ambiguities in the language. The agency rewrote the rule to clarify the ambiguities, and RRC approved the permanent rule

March 15, 2007 - Before 5 P.M. of the following day, RRC received requests for legislative review from more than 10 people thereby delaying the effective date of the permanent rule until at least the 31st legislative day of the 2008 session of the General Assembly.

Prior to April 19, 2007 - DMA submitted the rule to RRC as a temporary rule pursuant to G.S. 150B-21.3(b2).

April 19, 2007 - RRC found that the findings of need for the rule did not meet the criteria for a temporary rule listed in G.S. 150B-21.1(a), because it was not shown that the immediate adoption of the rule was required by the effective date of a recent act of the General Assembly pursuant to G.S. 150B-21.1(a)(2). The agency was notified that it could supplement its findings of need with additional findings.

Prior to June 28, 2007 - DMA submitted an amended findings of need statement. RRC was still not convinced that the criteria for a temporary rule had been met. At this time, RRC returned the temporary rule to the agency.

EFFECTIVE DATE: Effective when it becomes law.
H1537e1-SMST-CSST-93

Theresa Matula substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1148
Second Edition Engrossed 5/8/07

Short Title:	Identify Juvenile Escapees.	(Public)
Sponsors:	Representatives Justus, Sutton, Spear, Goforth (Primary Sponsors); Clary, Coates, Faison, Folwell, Frye, Gulley, Haire, Hilton, Howard, Hurley, Johnson, Kiser, Love, McAllister, McGee, Mobley, Moore, Pierce, Rapp, Ray, Stam, Starnes, Steen, Stiller, Thomas, Wainwright, Walend, Walker, E. Warren, and R. Warren.	
Referred to:	Judiciary III.	

March 29, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO RELEASE THE IDENTIFICATION OF JUVENILES WHO ESCAPE THE CUSTODY OF THE DEPARTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2102(d1) is repealed.

SECTION 2. Article 31 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-3102. Disclosure of information about juveniles who escape.**

(a) Notwithstanding G.S. 7B-2102(d) or any other law to the contrary, within 24 hours of the time a juvenile escapes from custody the Department shall release to the public the juvenile's name and photograph, and a brief description of the offense for which the juvenile was alleged to have committed or was adjudicated delinquent, if:

(1) The juvenile escapes from a detention facility, and the juvenile is alleged to have committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(2) The juvenile escapes from a youth development center, and the juvenile has been adjudicated delinquent for an offense that would be a felony or a Class A1 misdemeanor if committed by an adult.

(b) When a juvenile escapes from custody, and the juvenile has been adjudicated for an offense the would be a Class 1, 2, or 3 misdemeanor if committed by an adult, the Department may release to the public within 24 hours the juvenile's name and photograph, and a brief description of the offense for which the juvenile was adjudicated delinquent."

SECTION 3. G.S. 7B-3100(b) reads as rewritten:

"(b) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the ~~parents.~~ parents and except as provided in G.S. 7B-3102."

SECTION 4. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1148

Second Edition Engrossed 5/8/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1148-CSRR-42 [v.9]

7/25/2007 5:54:20 PM

Short Title: Identify Juvenile Escapees. (Public)

Sponsors:

Referred to:

March 29, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO RELEASE THE IDENTIFICATION OF CERTAIN JUVENILES WHO ESCAPE FROM CUSTODY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2102(d1) is repealed.

SECTION 2. Article 31 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-3102. Disclosure of information about juveniles who escape.**

(a) Notwithstanding G.S. 7B-2102(d) or any other law to the contrary, within 24 hours of the time a juvenile escapes from custody the Department shall release to the public the juvenile's name and photograph; the name and location of the institution from which the juvenile escaped; and a statement, based on the juvenile's record, of the level of concern of the Department as to the juvenile's threat to self or to others, if:

(1) The juvenile escapes from a detention facility, and the juvenile is alleged to have committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(2) The juvenile escapes from a youth development center, and the juvenile has been adjudicated delinquent for an offense that would be a felony or a Class A1 misdemeanor if committed by an adult.

(b) When a juvenile escapes from custody, and the juvenile has been adjudicated for an offense that would be a Class 1, 2, or 3 misdemeanor if committed by an adult, the Department may release to the public within 24 hours the juvenile's name and photograph; the name and location of the institution from which the juvenile escaped, or if the juvenile's escape was not from an institution, the circumstances and location of the escape; and a statement, based on the juvenile's record, of the level of concern of the Department as to the juvenile's threat to self or to others.

(c) If a juvenile subject to subsection (a) or (b) of this section is returned to custody before the disclosure required or permitted is made, the Department shall not make the disclosure.

(d) The Department shall maintain a photograph of every juvenile in its custody."

SECTION 3.(a) G.S. 7B-2102(a) reads as rewritten:

"(a) A law enforcement officer or agency shall fingerprint and photograph a juvenile who was 10 years of age or older at the time the juvenile allegedly committed a nondivertible offense as set forth in G.S. 7B-1701, when a complaint has been prepared for filing as a petition and the juvenile is in physical custody of law enforcement or the Department.

(a1) A county juvenile detention facility shall photograph a juvenile who has been committed to that ~~facility if the juvenile was at least 10 years old at the time that juvenile allegedly committed a nondivertible offense as set forth in G.S. 7B-1701.~~ facility. The county detention facility shall release any photograph it makes or receives pursuant to this section to the Department, upon the Department's request. The duty of confidentiality in subsection (d) of this section applies to the Department, except as provided in G.S. 7B-3102."

SECTION 3.(b) G.S. 7B-2102(c) reads as rewritten:

"(c) A law enforcement officer, facility, or agency who fingerprints or photographs a juvenile pursuant to this section shall do so in a proper format for transfer to the State Bureau of Investigation and the Federal Bureau of Investigation. After the juvenile, who was 10 years of age or older at the time of the offense, is adjudicated delinquent of an offense that would be a felony if committed by an adult, fingerprints obtained pursuant to this section shall be transferred to the State Bureau of Investigation and placed in the Automated Fingerprint Identification System (AFIS) to be used for all investigative and comparison purposes. Photographs obtained pursuant to this section shall be placed in a format approved by the State Bureau of Investigation and may be used for all investigative or comparison purposes. The State Bureau of Investigation shall release any photograph it receives pursuant to this section to the Department, upon the Department's request. The duty of confidentiality in subsection (d) of this section applies to the Department, except as provided in G.S. 7B-3102."

SECTION 4. G.S. 7B-3100(b) reads as rewritten:

"(b) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the ~~parents.~~ parents and except as provided in G.S. 7B-3102."

SECTION 5. This act becomes effective October 1, 2007.

HOUSE BILL 1148: Identify Juvenile Escapees

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 25, 2007
Introduced by:	Reps. Justus, Sutton, Spear, Goforth	**Summary by:**	William R. Gilkeson Committee Co-Counsel
Version:	PCS to Second Edition H1148-CSRR-42		

SUMMARY: ***House Bill 1148 would require the Department of Juvenile Justice to release identifying information concerning certain juveniles who escape from custody.***

CURRENT LAW: The Juvenile Code provides, in G.S. 7B-3100(b), that disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court is generally prohibited. However, the publication of pictures of runaways is permitted with the permission of the parents. Under G.S. 7B-2102(d1), the court may order the release of a juvenile's photograph to the public if the juvenile escapes from a youth development center, other juvenile facility, a holdover facility, or from the custody of juvenile personnel or a local law enforcement officer.

BILL ANALYSIS: House Bill 1148 repeals the existing provision that ***allows*** the court to order the release of a juvenile's photograph to the public if the juvenile escapes from custody, and substitutes a provision that would ***require*** release of the photo as well other as information by the Department of Juvenile Justice and Delinquency Prevention (DJJDP). The DJJDP is required to release the information only if the juvenile escapes from a detention facility or a youth development center, and only if the juvenile is accused of or has been adjudicated delinquent for an offense that would be in certain categories of serious crimes if committed by an adult. For lesser offenses, the bill would ***allow*** the DJJDP to make public the same information.

Section 1 would repeal the provision that gives the court discretion to order the release of a juvenile escapee's photograph to the public.

Section 2 would amend the Juvenile Code to require DJJDP to release, within 24 hours of the escape, the following information about certain juveniles who have escaped from custody:

- Name.
- Photograph.
- Name and location of the institution from which the juvenile escaped.
- A statement, based on the juvenile's record, of the level of concern the DJJDP has as to the juvenile's threat to self or others.

The DJJDP would be ***required*** to release that information only if the escape fit the following patterns:

- The escape was from a detention facility and the juvenile is alleged to have committed an offense that for an adult would be a Class A, B1, B2, C, D, or E felony.
- The escape was from a youth development center and the juvenile has been adjudicated delinquent for an offense that for an adult would be any felony or a Class A1 misdemeanor. (*A youth development center is a secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to DJJDP.)* 7B-3102(a).

The bill would ***allow*** the DJJDP to release the same information within 24 hours about a juvenile who escapes from custody, if the juvenile has been adjudicated for an offense that for an adult would be a Class 1, 2, or 3 misdemeanor. *7B-3102(b).*

The bill provides that if the juvenile is returned to custody before the information is released, the DJJDP shall not release the information. *7B-3102(c).*

The bill would require DJJDP to maintain photographs of all the juveniles in its custody. *7B-3102(d).*

Section 3 would require county detention centers and the SBI, which are required by current law to make or maintain photographs of certain juveniles in custody, to release those photos to DJJDP upon DJJDP's request.

Section 4 would amend the current Juvenile Code provision that prohibits disclosure of identifying information to include an exception for juveniles who escape.

EFFECTIVE DATE: The bill would become effective October 1, 2007.

H1148e2-SMRR-CSRR-42

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1148

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

H1148-ARR-72 [v.2]

Date _____,2007

Comm. Sub. [YES]
Amends Title [NO]
H1148-CSRR-42

~~Representative~~ _____

moves to amend the bill on page 1, lines 12 and 23,
by deleting the term "juvenile's name" and substituting the term "juvenile's initials"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 13

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1148 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) SOLES
Sen.)

moves to amend the bill on page 1, line 5 12 and 13

( ) WHICH CHANGES THE TITLE

by deleting the term "juvenile's name" and substituting the term "juvenile's first name and last initial"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 1

HOUSE BILL 1094

Short Title:	Increase Penalties for Audiovisual Piracy.	(Public)
Sponsors:	Representatives Steen, McComas, Goforth, Thomas (Primary Sponsors); Allen, Barnhart, Carney, Coates, Current, Daughtridge, Faison, Fisher, Gibson, Glazier, Johnson, Justice, McGee, Moore, Neumann, Ray, Ross, Samuelson, Stam, Stiller, Tillis, and Wray.	
Referred to:	Judiciary I.	

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE PUNISHMENTS FOR UNLAWFUL OPERATION OF AN AUDIOVISUAL RECORDING DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-440.1 reads as rewritten:

"**§ 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,~~ I felony, if the violation is a first offense under this ~~section.~~section, with a minimum fine of two thousand five hundred dollars ($2,500).

b. A Class I felony, if the violation is a second or subsequent offense under this ~~section.~~section, with a minimum fine of five thousand dollars ($5,000).

(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 Certain Persons. – The owner or lessee of a motion picture theater, or the authorized agent or employee of the owner or lessee, who detains any person shall not be held civilly liable for claims arising out of such detention, when the detention is upon the premises of the motion picture theater or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining the person, the owner, lessee, agent, or employee had, at the time of the detention, probable cause to believe that the person committed an offense under this section. If the person being detained by the owner, lessee, agent, or employee is a minor under the age of 18 years, the owner, lessee, agent, or employee shall call or notify, or make a reasonable effort to call or notify, the parent or guardian of the minor during the period of detention. An owner, lessee, agent, or employee who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

(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, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 1094:
Increase Penalties for Audiovisual Piracy

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 25, 2007
Introduced by:	Reps. Steen, McComas, Goforth, Thomas	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Bill 1094 increases the penalties for unlawful operation of an audiovisual recording device in a motion picture theater. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.***

CURRENT LAW:

G.S. 14-440.1 makes it unlawful to knowingly operate, or attempt to operate, an audiovisual recording device in a motion picture theater. The offense is a Class 1 misdemeanor for a first offense, and a Class I felony for a second or subsequent offense.

Unless otherwise provided by statute, the amount of a fine for a Class 1 misdemeanor, or any felony offense, is within the discretion of the sentencing judge.

BILL ANALYSIS:

House Bill 1094 would

- increase the penalty for a first offense from a Class 1 misdemeanor to a Class I felony, and set a mandatory minimum fine of $2,500.
- The bill retains the Class I felony for a second or subsequent offense, but sets the mandatory minimum fine at $5,000.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Summary contribution by Susan Sitze, Staff Attorney.

H1094e1-SMRK

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 26, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlie Hobgood	NC Dept. of Justice
Bob Blum	NC DOJ
Tracy Hayes	NC DOJ
Belinda Smith	NC DOJ
Lynne Testa	NC DMA
Marjorie Morris	NC DMA
Christine Wunsche	IOG - Daily Bulletin
Andy Munn	REBIC
Dirk Carlton	NCFSA
MICHAEL HUGHES	WELLS FARGO
Elizabeth Dalton	MCRMA
	SA

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 26, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Martin Pharr	NC DJJDP
Rob Schofield	NC Policy Watch
[signature]	[signature]
Doug Heron	NC BAR Assn

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 26, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
McNeil Chestnut	For the Comm. of Banks
Josh Stein	NC AG-O
Phil Cohoman	"
David Kaiser	Poyner Spruill
Mary Bethel	AARP-NC
Carlene McNulty	NC Justice Center PO Box 28068 Raleigh NC 27611
Paul Stock	NCBA
Betty Turner	BAC
Eric Zogry	Office of the Juvenile Defender
[illegible]	DHHS
Brett Sovine	Brown Brothers Harriman

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

July 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	NCASA
Bill Scoggin	Lee
Larry Heckner	HSBC - North America
Speros Plaggis	DOA
ROBERT M. ZIMMERS	NC DOA
[illegible]	JD, AL, PA
Brian Lewis	Covenant with NC's children
Sarah Preston	ACLU-NC
John McKay	Gov Office
John Phelps	NCLM
Kathy Dudley	DJJDP

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

July 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas Goldsmith	NTC

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Thursday, July 26, 2007
9:00 a.m.
Room 1027

1. **Call Meeting to Order.**
2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 179	Actions to Address Medicaid Fraud.	Senator Rand
HB 1094	Increase Penalties for Audiovisual Piracy.	Representative Thomas (explained) Representative Goforth Representative McComas Representative Steen
HB 1148	Identify Juvenile Escapees.	Representative Justus Representative Goforth Representative Sutton Representative Spear
HB 1284	Breach/Construction Contract Accrual Date	Representative Stam
HB 1374(SB 1264	Protect Homeowners/Reduce Foreclosure.	Representative Blue Representative Weiss Representative Dickson Representative Glazier
HB 1384	Repeal Rule Against Perpetuities.	Representative Glazier Representative Tillis

Adjournment.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Thursday, July 26, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1148** Identify Juvenile Escapees.

Draft Number:	PCS 60401
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B. **1384** Repeal Rule Against Perpetuities.

Draft Number:	PCS 80487
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1374** Protect Homeowners/Reduce Foreclosure.

Draft Number:	PCS 70605
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Thursday, July 26, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1094** Increase Penalties for Audiovisual Piracy.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1537** DWI Technical Amendments.
Draft Number: PCS 80486
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Judiciary I Committee
July 27, 2007
9:30 a.m.
Minutes

The Senate Judiciary I Committee met at 9:30 a.m. on Friday, July 27, 2007 in Room 1027 of the Legislative Building. A quorum was present.

Senator Nesbitt called the meeting to order and recognized Senator Rand to comment on **SB 179** *(Actions to Address Medicaid Fraud)*.

A proposed committee substitute was distributed to the members and Senator Rand moved that it be adopted. The motion carried.

Senator Rand told the committee that SB 179 would do all of the following:

1. *Increase criminal penalties for provider fraud.*
2. *Establish a private civil action for provider false Medicaid claims.*
3. *Make it unlawful to engage in kickback activities relating to referrals to and purchases for the Medicaid program.*

He told the members that the bill was a work in progress and he believed it would save the state money and also allow the state to "recapture" some money that had been paid to fraudulent claims. He is working with the Attorney's Office on this legislation.

Committee Counsel, Erika Churchill, was asked to give a summary of the bill. (See Bill Analysis.)

Discussion followed with many committee members expressing major concerns about the right of action as written in the bill. Senator Soles was concerned that a case could not be dismissed with permission from the Attorney General.

Senator Rand said that this bill was patterned about the federal statute.

Senator Nesbitt recognized Charlie Hobgood from the Medicaid Fraud Division of the Attorney General' Office. He told the committee that it was the intention to pattern this bill after the federal statute.

Members of the committee felt that there certainly is a need to address Medicaid fraud in North Carolina, but there was consensus that this bill was too convoluted and needed further work.

Senator Nesbitt appointed an Ad Hoc Subcommittee to work on SB 179. Senators Brunstetter, Soles, Rand, Nesbitt and Kinnaird would serve on the subcommittee.

The meeting was adjourned at 11:00 a.m.

Copies of SB 179, the PCS for SB 179 and the Bill Analysis for SB 179 are attached to these Minutes as Attachment I, Attachment II, and Attachment III respectively.

Respectfully submitted,

Martin Nesbitt

Senator Martin Nesbitt
Chairman

Janette Whaley Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 179

Short Title:	Actions to Address Medicaid Fraud.	(Public)
Sponsors:	Senators Rand; Atwater, Brown, Goodall, Preston, and Purcell.	
Referred to:	Judiciary 1 (Civil).	

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE PROSECUTION OF MEDICAID FRAUD BY INCREASING CRIMINAL PENALTIES FOR PROVIDER FRAUD, ESTABLISHING A PRIVATE CIVIL ACTION FOR PROVIDER FALSE CLAIMS, AUTHORIZING INVESTIGATIVE DEMAND PROCEDURES IN CASES OF PROVIDER FRAUD, MAKING IT UNLAWFUL TO ENGAGE IN KICKBACK ACTIVITIES RELATING TO REFERRALS TO AND PURCHASES FOR THE MEDICAID PROGRAM, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 108A-70.11(5) reads as rewritten:

"(5) "Medical Assistance Program" means the Medical Assistance Program established pursuant to G.S. 108A-54 and includes the North Carolina Division of Medical Assistance ~~and~~ or its fiscal agent."

SECTION 1.(b) G.S. 108A-70.12(a) reads as rewritten:

"**§ 108A-70.12. Liability for certain acts; damages; effect of repayment.**

(a) Liability for Certain Acts. – It shall be unlawful for any provider of medical assistance under the Medical Assistance Program to:

(1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; ~~or~~

(2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance ~~Program.~~Program;

(3) Conspire to defraud the Medical Assistance Program by getting a false or fraudulent claim allowed or paid; or

(4) Knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation."

SECTION 1.(c) G.S. 108A-70.12(b)(1) reads as rewritten:

"(b) Damages. –

(1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand five hundred dollars ~~($5,000)~~($5,500) and not more than ~~ten thousand dollars ($10,000)~~eleven thousand dollars ($11,000) plus three times the amount of damages which the ~~Medicaid~~ Medical Assistance Program sustained because of the act of the provider.

..."

SECTION 2. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7A. Civil Action by Private Persons for Provider False Claims.

"**§ 108A-70.17. Civil action filed by private persons.**

(a) A person may bring a civil action for a violation of G.S. 108A-70.12 on behalf of the person and the State. The action shall be brought in the name of the State. The action may be dismissed only if the court and the Attorney General have given written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any of these motions may be supported by affidavits or other submission in camera. The defendant shall not be required to respond to any complaint filed under this section until 21 days after the complaint is unsealed and served upon the defendant.

(d) Before the expiration of the 120-day period or any extensions obtained under subsection (c) of this section, the State shall proceed with the action, in which case the action shall be conducted by the State, or notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to prosecute the action.

(e) When a person brings an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

"**§ 108A-70.17A. Rights of private plaintiff and State.**

(a) If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person bringing the action shall have the right to continue as a party to the action, subject to the limitations of this section.

(b) The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera. The State may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

(d) Upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as (i) limiting the number of witnesses the person may call; (ii) limiting the length of the testimony of such witnesses; (iii) limiting the person's cross-examination of witnesses; and (iv) otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days. The showing by the State shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding G.S. 108A-70.17(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the alternate proceeding as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the alternate proceeding that

has become final shall be conclusive on all parties to an action under this Part. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to a court of competent jurisdiction of the State, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusions are not subject to judicial review.

"**§ 108A-70.17B. Award to qui tam plaintiff.**

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a person under G.S. 108A-70.17, the person shall receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. The plaintiff's share in the proceeds of the action or settlement is administrative costs of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information proved by the person bringing the action, relating to allegations or transaction in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds of the action, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant. A share of the proceeds of an action or settlement of the claim shall not be awarded to the person bringing the action in State court under this Part if the person has received or may receive a share of the proceeds or settlement of an action or claim on the same facts brought in federal court.

(b) If the State does not proceed with an action, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of G.S. 108A-70.12 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a) or (b) of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of G.S. 108A-70.12, that person shall be dismissed from the civil action and shall not receive any share of the

proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"**§ 108A-70.17C. Certain actions barred.**

(a) No court shall have jurisdiction over an action brought under this Part based on information discovered by a present or former employee of the State during the course of the present or former employee's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels, and unless the State failed to act on the information provided within a reasonable period of time.

(b) In no event may a person bring an action under this Part that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the State is already a party.

(c) No court shall have jurisdiction over an action under this Part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General, or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this Part that is based on the information.

(d) The State is not liable for expenses a person incurs in bringing an action under this Part.

(e) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part.

"**§ 108A-70.17D. Procedure; statute of limitations.**

A civil action under this Part may not be brought (i) more than six years after the date on which the violation is committed, or (ii) more than three years after the date when facts material to the right of the action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances, but in that event no more than 10 years after the date on which the violation is committed, whichever occurs last."

SECTION 3. G.S. 108A-70.15 reads as rewritten:

"**§ 108A-70.15. Employee remedies.**

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this ~~Part.~~Part or Part 7A of this Article.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under G.S. ~~108A-70.12,~~ 108A-70.12, or Part 7A of this Article, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under G.S. ~~108A-70.12,~~ 108A-70.12, or Part 7A of this Article, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section."

SECTION 4. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-63.1. Authorized investigative demand procedures.**

(a) In any investigation relating to any act or activity involving a violation of G.S. 108A-64, 108A-60, 14-32.1, or 14-32.2, the Attorney General may issue in writing and cause to be served a subpoena:

(1) Requiring the production of any records, books, papers, documents, electronic media, or other objects or tangible things, which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control; or

(2) Requiring a custodian of records to give testimony concerning the production and authentication of the records.

(b) A subpoena under this section shall describe the objects required to be produced and shall also prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

(c) Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the State.

(d) A subpoena issued under this section may be served in the manner provided in Rule 45(b) of the Rules of Civil Procedure, G.S. 1A-1, except that subdivision (2) of subsection (b) of Rule 45(b) does not apply to subpoenas issued under this section.

(e) In the case of failure by any person without adequate excuse to obey a subpoena served upon the person, the Attorney General may invoke the aide of any court of this State. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony concerning the production and authentication of the records. Failure to obey the order of the court may be punished by the court as contempt thereof.

(f) Notwithstanding any other State law to the contrary, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of this State to any customer or other person for the production or for nondisclosure of the production to the customer.

(g) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefor.

(1) In assessing good cause under this subsection, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

(2) Upon the granting of an order to disclose, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure."

SECTION 5. G.S. 108A-63 reads as rewritten:

"**§ 108A-63. Medical assistance provider fraud.**

(a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

(1) In any application for payment under this Part, or for use in determining entitlement to such payment; or

(2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

(1) His initial or continued entitlement to payment under this Part; or

(2) The amount of payment to which such person is or may be entitled.

(c) ~~Any~~ Except as otherwise provided in subsection (e) of this section, any person who violates a provision of this section shall be guilty of a Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

(e) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

(1) Defraud the Medical Assistance Program; or

(2) Obtain, by means of false or fraudulent pretenses, representations or promises, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program,

in connection with the delivery of or payment for health care benefits, items, or services. If the value of the health care benefits, items, or services is one hundred thousand dollars ($100,000) or more, a violation of this subsection is a Class C felony. If the value of the health care benefits, items, or services is less than one hundred thousand dollars ($100,000), a violation of this subsection is a Class H felony.

(f) It shall be unlawful for any person to knowingly and willfully solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(1) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this Part, or

(2) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this Part.

(g) It shall be unlawful for any person to knowingly and willfully offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(1) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this Part, or

(2) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this Part.

(h) Subsections (f) and (g) of this section shall not apply to:

(1) Contracts between the State and a public or private agency where part of the agency's responsibility is referral of a person to a provider; and

(2) Any conduct or activity that does not violate 42 U.S.C. § 1320a-7b(b), and amendments thereto, or is protected by 42 C.F.R. § 1001.952, and amendments thereto."

SECTION 6. There is appropriated from the General Fund to the Department of Justice the sum of $ for the 2007-2008 fiscal year, and the sum of $ for the 2008-2009 fiscal year. These funds shall be used for additional investigative legal and support positions and for other purposes to carry out the provisions of this act.

SECTION 7. Sections 1 through 4 of this act become effective December 1, 2007. The remainder of this act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE BILL 179
PROPOSED COMMITTEE SUBSTITUTE S179-CSST-92 [v.3]

7/25/2007 10:38:15 PM

Short Title: Actions to Address Medicaid Fraud. (Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE PROSECUTION OF MEDICAID FRAUD BY INCREASING CRIMINAL PENALTIES FOR PROVIDER FRAUD, ESTABLISHING A PRIVATE CIVIL ACTION FOR PROVIDER FALSE CLAIMS, AND MAKING IT UNLAWFUL TO ENGAGE IN KICKBACK ACTIVITIES RELATING TO REFERRALS TO AND PURCHASES FOR THE MEDICAID PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 108A-70.11(5) reads as rewritten:

"(5) "Medical Assistance Program" means the Medical Assistance Program established pursuant to G.S. 108A-54 and includes the North Carolina Division of Medical Assistance ~~and~~ or its fiscal agent."

SECTION 1.(b) G.S. 108A-70.12(a) reads as rewritten:

"**§ 108A-70.12. Liability for certain acts; damages; effect of repayment.**

(a) Liability for Certain Acts. – It shall be unlawful for any provider of medical assistance under the Medical Assistance Program ~~to:~~to do any of the following.

(1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or ~~approval;~~ ~~or~~approval.

(2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance ~~Program.~~Program.

(3) Conspire to defraud the Medical Assistance Program by obtaining a false or fraudulent claim allowed or paid.

(4) Knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation."

SECTION 1.(c) G.S. 108A-70.12(b)(1) reads as rewritten:

"(b) Damages. –

(1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand five hundred dollars ~~($5,000)~~($5,500) and not more than ~~ten thousand dollars ($10,000)~~eleven thousand dollars ($11,000) plus three times the amount of damages which the ~~Medicaid~~ Medical Assistance Program sustained because of the act of the provider.

..."

SECTION 2. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7A. Civil Action by Private Persons for Provider False Claims.

"**§ 108A-70.17. Civil action filed by private persons.**

(a) A person may initiate a civil action for a violation of G.S. 108A-70.12 on behalf of the person and the State. The action shall be brought in the name of the State. The action may be dismissed only if the court and the Attorney General have given written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any of these motions may be supported by affidavits or other submission in camera. The defendant shall not be required to respond to any complaint filed under this section until 21 days after the complaint is unsealed and served upon the defendant.

(d) Before the expiration of the 120-day period or any extensions obtained under subsection (c) of this section, the State shall proceed with the action, in which case the action shall be conducted by the State, or notify the court that it declines to take over the action, in which case the person initiating the action shall have the right to prosecute the action.

(e) When a person initiates an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action. If another action is filed based on the facts underlying the pending action while the complaint is sealed under subsections (b) and (c) of this section, the court may consolidate the actions or dismiss the subsequent action.

"**§ 108A-70.17A. Rights of private plaintiff and State.**

(a) If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action and shall not be bound by any act of the person initiating the

action. The person bringing the action shall have the right to continue as a party to the action, subject to the limitations of this section.

(b) The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera. The State may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

(d) The court may, in its discretion, impose limitations on the person's participation in the litigation as set forth in subsection (e) of this section, such limitations must imposed after any of the following :

(1) A showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment.

(2) A showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense.

(e) Limitations on participation of the person initiating the action shall include all of the following:

(1) Limiting the number of witnesses the person may call.

(2) Limiting the length of the testimony of such witnesses.

(3) Limiting the person's cross-examination of witnesses.

(4) Other limits on the participation by the person initiating the action in the litigation as the court deems appropriate.

(f) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person initiating the action proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days. The showing by the State shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed

discovery in the civil action will interfere with the ongoing criminal or civil investigation or prosecution of the criminal or civil matter.

(h) Notwithstanding G.S. 108A-70.17(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. Any finding of fact or conclusion of law made in the alternate proceeding that has become final shall be conclusive on all parties to an action under this Part. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to a court of competent jurisdiction of the State, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusions are not subject to judicial review.

"**§ 108A-70.17B. Award to qui tam plaintiff.**

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a person under G.S. 108A-70.17, the person shall receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. The plaintiff's share in the proceeds of the action or settlement is administrative costs of the action. The person initiating the action shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant. A share of the proceeds of an action or settlement of the claim shall not be awarded to the person initiating the action in State court under this Part if the person has received or may receive a share of the proceeds or settlement of an action or claim on the same facts brought in federal court. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information proved by the person initiating the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, the court may reduce the award under this subsection to such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds of the action, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation.

(b) If the State does not proceed with an action, the person initiating the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The person initiating the action shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Notwithstanding subsections (a) and (b) of this section, if the person initiating the action is a person who planned and initiated the violation of G.S. 108A-70.12 upon which the action was brought, that person shall be dismissed as a qui tam plaintiff not receive any share of the proceeds of the action. If the person initiating the action is

convicted of criminal conduct arising from the person's role in the violation of G.S. 108A-70.12, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person initiating the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"**§ 108A-70.17C. Certain actions barred.**

(a) No court shall have jurisdiction over an action brought under this Part based on information discovered by a present or former employee of the State or a political subdivision of the State during the course of the present or former employee's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels, and unless the State or political subdivision failed to act on the information provided within a reasonable period of time.

(b) In no event may a person bring an action under this Part that is based upon allegations or transactions that are the subject of a criminal action, civil action or an administrative proceeding in which the State is already a party.

(c) No court shall have jurisdiction over an action under this Part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General, or the person initiating the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this Part that is based on the information.

(d) The State is not liable for expenses a person incurs in bringing an action under this Part.

(e) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part.

"**§ 108A-70.17D. Procedure; statute of limitations.**

(a) A civil action under this Part may not be brought after the later of either of the following:

(1) More than six years after the date on which the violation is committed.

(2) More than three years after the date when facts material to the right of the action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances.

(b) If the civil action is brought under subdivision (a)(2) of this section, it may not be brought more than 10 years after the date on which the violation is committed."

SECTION 3. G.S. 108A-70.15 reads as rewritten:

"**§ 108A-70.15. Employee remedies.**

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this ~~Part.~~Part or Part 7A of this Article.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under G.S. ~~108A-70.12,~~ 108A-70.12, or Part 7A of this Article, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under G.S. ~~108A-70.12,~~ 108A-70.12, or Part 7A of this Article, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section."

SECTION 4. G.S. 108A-63 reads as rewritten:

"**§ 108A-63. Medical assistance provider fraud.**

(a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

(1) In any application for payment under this Part, or for use in determining entitlement to such payment; or

(2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

(1) His initial or continued entitlement to payment under this Part; or

(2) The amount of payment to which such person is or may be entitled.

(c) ~~Any~~ Except as otherwise provided in subsection (e) of this section, any person who violates a provision of this section shall be guilty of a Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

(e) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

(1) Defraud the Medical Assistance Program; or

(2) Obtain, by means of false or fraudulent pretenses, representations or promises, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program,

in connection with the delivery of or payment for health care benefits, items, or services. If the value of the health care benefits, items, or services is one hundred

thousand dollars ($100,000) or more, a violation of this subsection is a Class C felony. If the value of the health care benefits, items, or services is less than one hundred thousand dollars ($100,000), a violation of this subsection is a Class H felony.

(f) It shall be unlawful for any person to knowingly and willfully solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(1) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this Part, or

(2) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this Part.

(g) It shall be unlawful for any person to knowingly and willfully offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(1) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this Part, or

(2) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this Part.

(h) Subsections (f) and (g) of this section shall not apply to:

(1) Contracts between the State and a public or private agency where part of the agency's responsibility is referral of a person to a provider; and

(2) Any conduct or activity that does not violate 42 U.S.C. § 1320a-7b(b), and amendments thereto, or is protected by 42 C.F.R. § 1001.952, and amendments thereto."

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date and actions filed on or after that date.

SENATE BILL 179:
Actions to Address Medicaid Fraud

BILL ANALYSIS

Committee:	Senate Ref to Judiciary 1 (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	July 25, 2007
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	PCS to First Edition S179-CSST-92		

SUMMARY: ***Senate Bill 179 would do all of the following:***

1. ***Increase criminal penalties for provider fraud.***
2. ***Establish a private civil action for provider false Medicaid claims.***
3. ***Make it unlawful to engage in kickback activities relating to referrals to and purchases for the Medicaid program.***

BILL ANALYSIS:

Section 1. The bill amends GS 108A-70.12 to make it illegal for medical assistance providers under the Medical Assistance Program to:

1. Conspire to defraud the Medical Assistance Program by getting a false claim allowed or paid, or
2. Knowingly make or use a false record to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program.

Section 2. Amends GS 108A-70.12(b)(1) to increase the floor and the ceiling for civil penalties from $5,000 to $5,500 and from $10,000 to $11,000, respectively.

Section 3. Enacts new Part 7A, Civil Action by Private Persons for Provider False Claims, of Article 2 of Chapter 108A to allow a person to bring a civil action for a violation of GS 108A-70.12 on behalf of the person and the State, in the name of the State. The State is notified, and is provided an opportunity to intervene. If the State proceeds with the action, it has the primary responsibility for prosecuting the action and is not bound by the person bringing the action. The State may dismiss the action, upon notice to the person, may settle the action after a hearing, and may request that the participation of the person initiating the action be limited in the litigation upon a showing by the State or defendant. If the award is for the State, the person shall receive at least 15% of the proceeds, but no more than 25%. If the State opted not to proceed with the action, and the award is for the State, the person initiating the action shall receive at least 25% of proceeds, but no more than 30% plus reasonable expenses. If the court finds that the action was brought by a person who planned and initiated the violation upon which the action is based, that person may not share in the proceeds. The following actions are barred:

1. An action brought based on information from a present or former State employee or employee of a political subdivision of the State unless the person has already exhausted existing internal procedures or the State has failed to act on the information within a reasonable time.
2. Actions based upon allegations that are the subject of a civil suit or administrative proceed that the State is already party to.
3. Actions based upon public disclosure in a number of settings, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

The statute of limitations at 6 years after the violation is committed, or more than 3 years after the date when facts material to the right of action should have been known. No action may be brought more than 10 years after the date the violation is committed.

Section 4. Effective July 1, 2007, the bill amends G.S. 108A-63 in 3 ways:

1. To make it illegal for a medical assistance provider to execute, or attempt to execute, a scheme or artifice to defraud the Medical Assistance Program or use false pretenses to obtain money or property owned by the Medical Assistance Program in connection with the delivery of or payment for health care benefits, items, or services. If the value of the items, benefits or services is $100,000 or more, a violation is a Class C felony; if it is valued at less than $100,000, a violation is a Class H felony.
2. To make it illegal for any person to solicit or receive any remuneration in return for referring an individual to a person for furnishing services for which payment is made under the Medical Assistance Program or in return for purchasing or recommending purchasing an item for which payment may be made under the Medical Assistance Program.
3. To make it illegal for any person to offer or pay any remuneration in return for referring an individual to a person for furnishing services for which payment is made under the Medical Assistance Program or in return for purchasing or recommending purchasing an item for which payment may be made under the Medical Assistance Program.

EFFECTIVE DATE: Effective December 1, 2007, and applies to offenses committed on or after that date and actions filed on or after that date.

S0179e1-SMST-CSST-92

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 27, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jarod Jones	NCHA
[illegible]	NCMS
[illegible]	[illegible]
Mary Bell	AARP - NC
Cliff Ventle	Gov's Office
John Motyka	Gov Office
Rev. Mark Creech	CAL
Peyton Maynard	[illegible]
Steve Metcalf	RHA
Rebecca Troutman	NCACC

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 27, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roz Sawitt	NC CCC
J Smith	DHHS
S Lamm	DHHS
Charlie Hobgood	NC DOJ
John Rust	NCFPC
Barbara Carsley	BSCOR
Don McCorquodale	MFS
Rita Harris	NC SPA
Jim Eder	NCTA
Reid H. Simons	NCTA

SENATE JUDICIARY I COMMITTEE
(Civil)

July 31, 2007
10 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, July 31 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt, Vice Chair Phil Berger, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. Floyd McKissick, Sen. Tony Rand and Sen. Jerry Tillman.

Vice Chairman Phil Berger called the meeting to order at 10:26 a.m. due to Chairman Nesbitt's delay from a conflicting meeting.

The first and only order of business was Senate Bill 179, a bill strengthening the prosecution of Medicaid fraud by increasing criminal penalties. Sen. Berger recognized the bill sponsor Sen. Tony Rand.

A proposed committee substitute was distributed among members. Sen. Rand moved for adoption of the CPS, and the motion passed unanimously.

Sen. Rand called on staff to explain the bill. Staff Attorney Erika Churchill noted changes in the bill, including on page three, line eleven and page two, line 30. Discussion followed among members regarding how attorneys are paid.

During committee discussion, Sen. Brunstetter questioned why a period of 51 days was needed after a complaint is served. Discussion ensued. Sen. Brunstetter then moved for favorable report, unfavorable as to original bill. The motioned passed unanimously and the bill is re-referred to the Senate Appropriations Committee.

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

Senate Bill 179, a Proposed Committee Substitute for SB 179, a Bill Analysis for the PCS to SB 179 are attached to these Minutes as Attachment 1, 2, and 3 respectively.

Respectfully submitted,

Martin Nesbitt
Senator Martin L. Nesbitt
Chair

Jessica Kozma Bennett
Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 179

Short Title:	Actions to Address Medicaid Fraud.	(Public)
Sponsors:	Senators Rand; Atwater, Brown, Goodall, Preston, and Purcell.	
Referred to:	Judiciary 1 (Civil).	

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE PROSECUTION OF MEDICAID FRAUD BY INCREASING CRIMINAL PENALTIES FOR PROVIDER FRAUD, ESTABLISHING A PRIVATE CIVIL ACTION FOR PROVIDER FALSE CLAIMS, AUTHORIZING INVESTIGATIVE DEMAND PROCEDURES IN CASES OF PROVIDER FRAUD, MAKING IT UNLAWFUL TO ENGAGE IN KICKBACK ACTIVITIES RELATING TO REFERRALS TO AND PURCHASES FOR THE MEDICAID PROGRAM, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 108A-70.11(5) reads as rewritten:

"(5) "Medical Assistance Program" means the Medical Assistance Program established pursuant to G.S. 108A-54 and includes the North Carolina Division of Medical Assistance ~~and~~ or its fiscal agent."

SECTION 1.(b) G.S. 108A-70.12(a) reads as rewritten:

"**§ 108A-70.12. Liability for certain acts; damages; effect of repayment.**

(a) Liability for Certain Acts. – It shall be unlawful for any provider of medical assistance under the Medical Assistance Program to:

(1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; ~~or~~

(2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance ~~Program.~~Program;

(3) Conspire to defraud the Medical Assistance Program by getting a false or fraudulent claim allowed or paid; or

(4) Knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation."

SECTION 1.(c) G.S. 108A-70.12(b)(1) reads as rewritten:

"(b) Damages. –

(1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand five hundred dollars ~~($5,000)~~($5,500) and not more than ~~ten thousand dollars ($10,000)~~eleven thousand dollars ($11,000) plus three times the amount of damages which the ~~Medicaid~~ Medical Assistance Program sustained because of the act of the provider.

..."

SECTION 2. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7A. Civil Action by Private Persons for Provider False Claims.

"**§ 108A-70.17. Civil action filed by private persons.**

(a) A person may bring a civil action for a violation of G.S. 108A-70.12 on behalf of the person and the State. The action shall be brought in the name of the State. The action may be dismissed only if the court and the Attorney General have given written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any of these motions may be supported by affidavits or other submission in camera. The defendant shall not be required to respond to any complaint filed under this section until 21 days after the complaint is unsealed and served upon the defendant.

(d) Before the expiration of the 120-day period or any extensions obtained under subsection (c) of this section, the State shall proceed with the action, in which case the action shall be conducted by the State, or notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to prosecute the action.

(e) When a person brings an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

"**§ 108A-70.17A. Rights of private plaintiff and State.**

(a) If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person bringing the action shall have the right to continue as a party to the action, subject to the limitations of this section.

(b) The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera. The State may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

(d) Upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as (i) limiting the number of witnesses the person may call; (ii) limiting the length of the testimony of such witnesses; (iii) limiting the person's cross-examination of witnesses; and (iv) otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days. The showing by the State shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding G.S. 108A-70.17(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the alternate proceeding as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the alternate proceeding that

has become final shall be conclusive on all parties to an action under this Part. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to a court of competent jurisdiction of the State, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusions are not subject to judicial review.

"**§ 108A-70.17B. Award to qui tam plaintiff.**

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a person under G.S. 108A-70.17, the person shall receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. The plaintiff's share in the proceeds of the action or settlement is administrative costs of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information proved by the person bringing the action, relating to allegations or transaction in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds of the action, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant. A share of the proceeds of an action or settlement of the claim shall not be awarded to the person bringing the action in State court under this Part if the person has received or may receive a share of the proceeds or settlement of an action or claim on the same facts brought in federal court.

(b) If the State does not proceed with an action, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of G.S. 108A-70.12 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a) or (b) of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of G.S. 108A-70.12, that person shall be dismissed from the civil action and shall not receive any share of the

proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"**§ 108A-70.17C. Certain actions barred.**

(a) No court shall have jurisdiction over an action brought under this Part based on information discovered by a present or former employee of the State during the course of the present or former employee's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels, and unless the State failed to act on the information provided within a reasonable period of time.

(b) In no event may a person bring an action under this Part that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the State is already a party.

(c) No court shall have jurisdiction over an action under this Part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General, or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this Part that is based on the information.

(d) The State is not liable for expenses a person incurs in bringing an action under this Part.

(e) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part.

"**§ 108A-70.17D. Procedure; statute of limitations.**

A civil action under this Part may not be brought (i) more than six years after the date on which the violation is committed, or (ii) more than three years after the date when facts material to the right of the action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances, but in that event no more than 10 years after the date on which the violation is committed, whichever occurs last."

SECTION 3. G.S. 108A-70.15 reads as rewritten:

"**§ 108A-70.15. Employee remedies.**

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this ~~Part.~~Part or Part 7A of this Article.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under G.S. ~~108A-70.12,~~ 108A-70.12, or Part 7A of this Article, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under G.S. ~~108A-70.12,~~ 108A-70.12, or Part 7A of this Article, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section."

SECTION 4. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-63.1. Authorized investigative demand procedures.**

(a) In any investigation relating to any act or activity involving a violation of G.S. 108A-64, 108A-60, 14-32.1, or 14-32.2, the Attorney General may issue in writing and cause to be served a subpoena:

(1) Requiring the production of any records, books, papers, documents, electronic media, or other objects or tangible things, which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control; or

(2) Requiring a custodian of records to give testimony concerning the production and authentication of the records.

(b) A subpoena under this section shall describe the objects required to be produced and shall also prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

(c) Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the State.

(d) A subpoena issued under this section may be served in the manner provided in Rule 45(b) of the Rules of Civil Procedure, G.S. 1A-1, except that subdivision (2) of subsection (b) of Rule 45(b) does not apply to subpoenas issued under this section.

(e) In the case of failure by any person without adequate excuse to obey a subpoena served upon the person, the Attorney General may invoke the aide of any court of this State. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony concerning the production and authentication of the records. Failure to obey the order of the court may be punished by the court as contempt thereof.

(f) Notwithstanding any other State law to the contrary, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of this State to any customer or other person for the production or for nondisclosure of the production to the customer.

(g) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefor.

(1) In assessing good cause under this subsection, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

(2) Upon the granting of an order to disclose, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure."

SECTION 5. G.S. 108A-63 reads as rewritten:

"**§ 108A-63. Medical assistance provider fraud.**

(a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

(1) In any application for payment under this Part, or for use in determining entitlement to such payment; or

(2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

(1) His initial or continued entitlement to payment under this Part; or

(2) The amount of payment to which such person is or may be entitled.

(c) ~~Any~~ Except as otherwise provided in subsection (e) of this section, any person who violates a provision of this section shall be guilty of a Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

(e) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

(1) Defraud the Medical Assistance Program; or

(2) Obtain, by means of false or fraudulent pretenses, representations or promises, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program,

in connection with the delivery of or payment for health care benefits, items, or services. If the value of the health care benefits, items, or services is one hundred thousand dollars ($100,000) or more, a violation of this subsection is a Class C felony. If the value of the health care benefits, items, or services is less than one hundred thousand dollars ($100,000), a violation of this subsection is a Class H felony.

(f) It shall be unlawful for any person to knowingly and willfully solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(1) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this Part, or

(2) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this Part.

(g) It shall be unlawful for any person to knowingly and willfully offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(1) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this Part, or

(2) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this Part.

(h) Subsections (f) and (g) of this section shall not apply to:

(1) Contracts between the State and a public or private agency where part of the agency's responsibility is referral of a person to a provider; and

(2) Any conduct or activity that does not violate 42 U.S.C. § 1320a-7b(b), and amendments thereto, or is protected by 42 C.F.R. § 1001.952, and amendments thereto."

SECTION 6. There is appropriated from the General Fund to the Department of Justice the sum of $ for the 2007-2008 fiscal year, and the sum of $ for the 2008-2009 fiscal year. These funds shall be used for additional investigative legal and support positions and for other purposes to carry out the provisions of this act.

SECTION 7. Sections 1 through 4 of this act become effective December 1, 2007. The remainder of this act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 179
PROPOSED COMMITTEE SUBSTITUTE S179-CSST-92 [v.6]

7/30/2007 10:09:34 PM

Short Title: Actions to Address Medicaid Fraud. (Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE PROSECUTION OF MEDICAID FRAUD BY INCREASING CRIMINAL PENALTIES FOR PROVIDER FRAUD, ESTABLISHING A PRIVATE CIVIL ACTION FOR PROVIDER FALSE CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 108A-70.11(5) reads as rewritten:

"(5) "Medical Assistance Program" means the Medical Assistance Program established pursuant to G.S. 108A-54 and includes the North Carolina Division of Medical Assistance ~~and~~ or its fiscal agent."

SECTION 1.(b) G.S. 108A-70.12(a) reads as rewritten:

"**§ 108A-70.12. Liability for certain acts; damages; effect of repayment.**

(a) Liability for Certain Acts. – It shall be unlawful for any provider of medical assistance under the Medical Assistance Program ~~to:~~to do any of the following:

(1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or ~~approval;~~ ~~or~~approval.

(2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance ~~Program.~~Program.

(3) Conspire to defraud the Medical Assistance Program by obtaining a false or fraudulent claim allowed or paid.

(4) Knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation."

SECTION 1.(c) G.S. 108A-70.12(b)(1) reads as rewritten:

"(b) Damages. –

(1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand five hundred dollars ~~($5,000)~~($5,500) and not more than ~~ten thousand dollars ($10,000)~~eleven thousand dollars ($11,000) plus three times the amount of damages which the ~~Medicaid~~ Medical Assistance Program sustained because of the act of the provider.

..."

SECTION 2. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7A. Civil Action by Private Persons for Provider False Claims.

"**§ 108A-70.17. Civil action filed by private persons.**

(a) A person may initiate a civil action for a violation of G.S. 108A-70.12 on behalf of the person and the State. The action shall be brought in the name of the State. The action may be dismissed prior to service of the complaint upon the defendant under subsection (c) of this section only if the court and the Attorney General have given written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information. The State may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any of these motions may be supported by affidavits or other submission in camera. The time period to respond to any complaint filed under this section shall commence 21 days after the complaint is unsealed and served upon the defendant.

(d) Before the expiration of the 120-day period or any extensions obtained under subsection (c) of this section, the State shall either proceed with the action, in which case the action shall be conducted by the State, or notify the court that it declines to take over the action, in which case the person initiating the action shall have the right to prosecute the action.

(e) When a person initiates an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action. If another action is filed based on the facts underlying the pending action while the complaint is sealed under subsections (b) and (c) of this section, the court may consolidate the actions or dismiss the subsequent action.

"**§ 108A-70.17A. Rights of private plaintiff and State.**

(a) If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action and shall not be bound by any act of the person initiating the

action. The person bringing the action shall have the right to continue as a party to the action, subject to the limitations of this section.

(b) The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(d) If the State proceeds with the action, the court may, in its discretion, impose limitations on the person's participation in the litigation as set forth in subsection (e) of this section. Such limitations must imposed after any of the following :

(1) A showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment.

(2) A showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense.

(e) Limitations on participation of the person initiating the action shall include all of the following:

(1) Limiting the number of witnesses the person may call.

(2) Limiting the length of the testimony of such witnesses.

(3) Limiting the person's cross-examination of witnesses.

(4) Other limits on the participation by the person initiating the action in the litigation as the court deems appropriate.

(f) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person initiating the action proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days. The showing by the State shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or prosecution of the criminal or civil matter.

(h) Notwithstanding G.S. 108A-70.17(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. Any finding of fact or conclusion of law made in the alternate proceeding that has become final shall be conclusive on all parties to an action under this Part. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal by a court of competent jurisdiction of the State, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusions are not subject to judicial review.

"§ 108A-70.17B. Award to qui tam plaintiff.

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a person under G.S. 108A-70.17, the person shall receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, if any, depending upon the extent to which the person substantially contributed to the prosecution of the action. The plaintiff's share in the proceeds of the action or settlement is administrative costs of the action. A share of the proceeds of an action or settlement of the claim shall not be awarded to the person initiating the action in State court under this Part if the person has received or may receive a share of the proceeds or settlement of an action or claim on the same facts brought in federal court. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information proved by the person initiating the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, the court may reduce the award under this subsection to such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds of the action, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation.

(b) If the State does not proceed with an action, the person initiating the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages, if awarded. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds.

(c) Notwithstanding subsections (a) and (b) of this section, if the person initiating the action is a person who primarily planned and initiated the violation of G.S. 108A-70.12 upon which the action was brought, that person shall be dismissed as a qui tam plaintiff and shall not receive any share of the proceeds of the action. If the person initiating the action is convicted of criminal conduct arising from the person's role in the violation of G.S. 108A-70.12, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person initiating the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and if the court finds

that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"**§ 108A-70.17C. Certain actions barred.**

(a) No court shall have jurisdiction over an action brought under this Part based on information discovered by a present or former employee of the State or a political subdivision of the State during the course of the present or former employee's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels, and unless the State or political subdivision failed to act on the information provided within a reasonable period of time.

(b) In no event may a person bring an action under this Part that is based upon allegations or transactions that are the subject of a criminal action, civil action, or an administrative proceeding in which the State is already a party.

(c) No court shall have jurisdiction over an action under this Part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General, or the person initiating the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this Part that is based on the information.

(d) The State is not liable for expenses a person incurs in bringing an action under this Part.

(e) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part.

"**§ 108A-70.17D. Procedure; statute of limitations.**

(a) A civil action under this Part may not be brought after the later of either of the following:

(1) More than six years after the date on which the violation is committed.

(2) More than three years after the date when facts material to the right of the action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances.

(b) If the civil action is brought under subdivision (a)(2) of this section, it may not be brought more than 10 years after the date on which the violation is committed."

SECTION 3. G.S. 108A-70.15 reads as rewritten:

"**§ 108A-70.15. Employee remedies.**

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this ~~Part.~~Part or Part 7A of this Article.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and

conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under G.S. ~~108A-70.12,~~ 108A-70.12, or Part 7A of this Article, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under G.S. ~~108A-70.12,~~ 108A-70.12, or Part 7A of this Article, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section."

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date and actions filed on or after that date.

SENATE BILL 179:
Actions to Address Medicaid Fraud

BILL ANALYSIS

Committee:	Senate Ref to Judiciary 1 (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	July 30, 2007
Introduced by:	Sen. Rand	**Summary by:**	R. Erika Churchill Committee Counsel
Version:	PCS to First Edition S179-CSST-94v.5		

SUMMARY: ***Senate Bill 179 would do all of the following:***

1. ***Increase criminal penalties for provider fraud.***
2. ***Establish a private civil action for provider false Medicaid claims.***

BILL ANALYSIS:

Section 1. The pcs amends the definition of 'Medical Assistance Program' to clarify it is the Medical Assistance Program with the Division of Medical Assistance.

The pcs amends G.S. 108A-70.12 to make it illegal for medical assistance providers under the Medical Assistance Program to:

1. Conspire to defraud the Medical Assistance Program by getting a false claim allowed or paid, or
2. Knowingly make or use a false record to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program.

Section 2. Amends G.S. 108A-70.12(b)(1) to increase the floor and the ceiling for civil penalties from $5,000 to $5,500 and from $10,000 to $11,000, respectively.

Section 3. Enacts new Part 7A, Civil Action by Private Persons for Provider False Claims, of Article 2 of Chapter 108A to allow a person to bring a civil action for a violation of G.S. 108A-70.12 on behalf of the person and the State, in the name of the State. The State is notified, and is provided an opportunity to intervene. If the State proceeds with the action, it has the primary responsibility for prosecuting the action and is not bound by the person bringing the action. The State may dismiss the action, upon notice to the person, may settle the action after a hearing, and may request that the participation of the person initiating the action be limited in the litigation upon a showing by the State or defendant. If the award is for the State, the person shall receive at least 15% of the proceeds, but no more than 25%. If the State opted not to proceed with the action, and the award is for the State, the person initiating the action shall receive at least 25% of proceeds, but no more than 30% plus reasonable expenses. If the court finds that the action was brought by a person who primarily planned and initiated the violation upon which the action is based, that person may not share in the proceeds. The following actions are barred:

1. An action brought based on information from a present or former State employee or employee of a political subdivision of the State unless the person has already exhausted existing internal procedures or the State has failed to act on the information within a reasonable time.
2. Actions based upon allegations that are the subject of a civil suit or administrative proceed that the State is already party to.

3. Actions based upon public disclosure in a number of settings, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

The statute of limitations at 6 years after the violation is committed, or more than 3 years after the date when facts material to the right of action should have been known. No action may be brought more than 10 years after the date the violation is committed.

EFFECTIVE DATE: Effective December 1, 2007, and applies to offenses committed on or after that date and actions filed on or after that date.

S0179e1-SMST-CSST-94v

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

July 31, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Baum	Kennedy Covington
Herman Huntaff	N.C.B.A.
Tracy Kimbrell	Parker Poe
Andy Ellen	NCRMA
Matthew McConnell	Carolinas Healthcare
Ann Lobe	DVLE
Jamal Jones	NCHA
Tommy Suter	Wyeth
Ben Comstock	WCSR
Roz Scott	NCCC
Barbara Carlson	BCBR
John Bourdeau	AstraZeneca

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — July 31, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	NC Association of County Commissioners

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I (CIVIL) COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Tuesday, July 31, 2007

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **179** Actions to Address Medicaid Fraud.

Draft Number:	PCS 65281
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY COMMITTEE
2007-2008 SESSION
Senator Martin L. Nesbitt, Chairman

Dan Clodfelter, Vice-Chairman
Room 408 LOB – 7158331

Sen. R. C. Soles Vice-Chairman
Rm 2022 - 733-5963

Sen. Phil Berger Vice-Chairman
Rm 1026 – 715-2525

Senator Charlie Albertson
525 LOB -733-5705

Sen. Julia Boseman
Rm 309 LOB – 715-2525

Sen. Andrew Brock
Rm 1119 – 715-0690

Sen. Harry Brown
620 LOB - 715-3034

Sen. Pete Brunstetter
Rm 1119 – 733-7850

Sen. Janet Cowell
Rm 1028 – 715-6400

Sen. Malcolm Graham
Rm 620 LOB – 733-5650

Sen. David Hoyle
300 A LOB - 733-5734

Sen. Clark Jenkins
308 LOB - 715-3040

Sen. Ellie Kinnaird
Rm 2115 – 733-5804

Sen. Vernon Malone
Rm 313 LOB – 733-5880

Sen. Floyd McKissick
Rm 621 LOB 733-4599

Sen. Tony Rand
300 C LOB - 733-9892

Committee Staff:
Erika Churchill
Bill Gilkeson
Kara McCraw
Hal Pell
Denise Huntley, Research Assistant
733-2578
Jessica Kozma Bennett, Committee
Assistant - 715-3001

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I COMMITTEE
2007-2008 SESSION



Senator Martin Nesbitt
Chairman



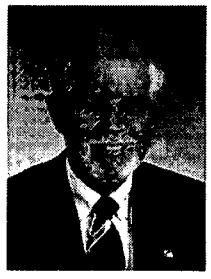
Senator Phil Berger
Vice Chairman



Senator Dan Clodfelter
Vice Chairman



Senator R. C. Soles
Vice Chairman



Senator Charlie Albertson
Member



Senator Julia Boseman



Senator Andrew Brock



Senator Harry Brown



Senator Pete Brunstetter



Senator Janet Cowell



Senator Malcolm Graham



Senator David Hoyle



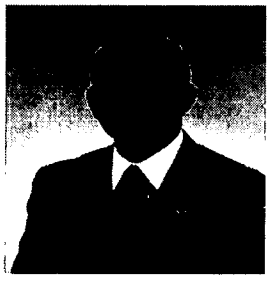
Senator Clark Jenkins



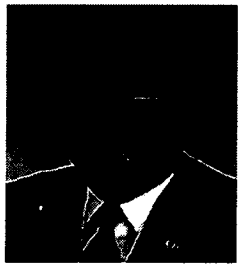
Senator Ellie Kinnaird



Senator Vernon Malone



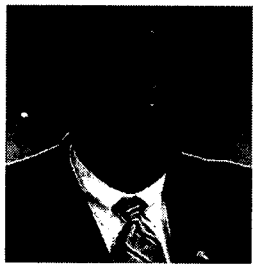
Senator Floyd McKissick



Senator Tony Rand



Senator Richard Stevens



Senator Jerry Tillman

SENATE JUDICIARY I COMMITTEE
(Civil)

May 27, 2008
2:00 p.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, May 27 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt, Vice Chair Dan Clodfelter, Vice Chair Phil Berger, Sen. Julia Boseman, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. David Hoyle, Sen. Clark Jenkins, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Tony Rand, Sen. Richard Stevens, and Sen. Jerry Tillman. Staff present were committee counselors Erika Churchill, Bill Gilkeson, Kara McGraw and Hal Pell, Research Assistant Denise Huntley and Committee Assistants Jan Lee and Jessica Kozma Bennett.

Chairman Nesbitt called the meeting to order at 2:34 p.m. .

House Bill 1113, calendared for discussion at the day's meeting was removed due to the absence of the bill sponsor, Representative Glazier, due to surgery. A second bill, Senate Bill 1736 was also pulled from the day's agenda.

Chairman Nesbitt then called on Staff Counsel Bill Gilkeson to explain Senate Bill 1766, a liability bill for private entities. Mr. Gilkeson began saying there was a technical amendment to the bill. The amendment was distributed to membership. Senator Brunstetter moved to adopt the amendment and the motion carried by unanimous vote. He then explained that the bill provides immunity for those doing work in a time of emergency, and that another bill calendared for the day's meeting, Senate Bill 1684, in part contained Senate Bill 1766. With little discussion Senator Hoyle moved for favorable report as amended. Senator Brunstetter then motioned to postpone Senate Bills 1684 and 1776. Both motions carried unanimously.

Senate Bill 1753 was then discussed. A Proposed Committee Substitute was distributed to membership. Chairman Nesbitt recognized counsel Kara McGraw to explain the bill. Ms. GcGraw said there were technical changes to the original bill. Senator Hoyle asked how the background checks were paid for. Ms. McGraw answered that the applicant has to pay. Senator Hoyle then moved for favorable report, unfavorable as to original bill. The motion carried unanimously.

Chairman Nesbitt then called to discussion Senator Bill 1799, an act allowing background checks for potential Division of Motor Vehicle employees. A Proposed Committee Substitute was distributed to members. Senator Clodfelter moved for adoption of the Proposed Committee Substitute. The motion carried unanimously.

Senator Jenkins, sponsor of the bill, explained that the bill allows the Division of Motor Vehicles to execute background criminal checks on potential employees. Mr. Pell added that there is a provision for a fee offset in the bill. Chairman Nesbitt asked whether the bill then needed to be referred to finance. Mr. Pell answered that it did. Senator Brock moved for favorable report, unfavorable as to original bill. The motion carried unanimously. The bill is referred to Finance Committee.

Senator Clodfelter then motioned to reconsider passage of Senate Bill 1753 Proposed Committee Substitute, allowing that bill to also be referred to Finance Committee. The motion for referred passed unanimously and the bill is referred to Finance Committee.

The meeting was adjourned at 3:15 p.m.

Respectfully submitted,

Senator Martin L. Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1766*

Short Title:	Liability Protection for Private Entities.	(Public)
Sponsors:	Senators Rand, Nesbitt, Malone, Boseman, Apodaca, Atwater, Brown, Dorsett, Goss, Hartsell, Jenkins, Jones, Kerr, Preston, and Snow.	
Referred to:	Judiciary I (Civil).	

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION FOR PRIVATE ASSOCIATIONS, PRIVATE CORPORATIONS, AND PRIVATE NONPROFIT ENTITIES AND ORGANIZATIONS WHEN RESPONDING TO IN-STATE INCIDENTS, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON GOVERNMENTAL IMMUNITY AND THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

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~~ worker, firm, partnership, association, or corporation 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.

(a1) The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses, and one of the following applies:

a. Emergency management services are provided at any place in this State during a state of disaster or state of emergency

declared by the Governor pursuant to this Article or G.S. 14-288.15, and the services are provided under the direction and control of the Secretary of the Department of Crime Control and Public Safety pursuant to G.S. 166A-5, 166A-6, and 143B-476, or the Governor.

b. Emergency management services are provided during a local state of emergency declared pursuant to Article 36A of Chapter 14 of the General Statutes, and the services are provided under the direction and control of the governing body of any municipality under G.S. 14-288.12 and G.S. 166A-8, the governing body of any county under G.S. 14-288.13 and G.S. 166A-8, or the chair of any board of county commissioners under G.S. 14-288.14 and G.S. 166A-8.

c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division of Emergency Management, the Division of Public Health, or the governing body of each county or municipality under G.S. 166A-7 and G.S. 166A-8 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent disaster or emergency or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence.

(b) The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, 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 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 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 the person would ordinarily possess if performing 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
Senate Bill 1766*

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

S1766-ARR-102 [v.1]

Date _____,2008

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

Senator _____

moves to amend the bill on page 3, line 11,
by rewriting that line to read:

"**SECTION 2.** This act is effective when it becomes law and applies to any cause of action arising on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 1766:
Liability Protection for Private Entities

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 23, 2008
Introduced by:	Sen. Rand	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Counsel

SUMMARY: ***The First Edition of Senate Bill 1766 would provide liability protection to private entities responding to emergencies when the private entity is acting at the direction of State or local government in response to an officially declared emergency and without compensation. It was recommended by the Joint Select Committee on Governmental Immunity and the Joint Select Committee on Emergency Preparedness and Disaster Management Recovery.***

The identical substance of this bill appears in Senate Bill 1776. The only differences between S1776 and S1766 are the sponsors and the fact that S1776 is labeled as recommended by the Emergency Preparedness committee and S1766 is labeled as recommended by both the Emergency Preparedness and the Governmental Immunity committees. An earlier version of this same proposal was recommended by the Public Health Study Commission. That earlier version was introduced as S1684.

The House, too, has a parallel set of the three bills, H2369, H2407, and H2422.

CURRENT LAW: ***Immunity for Emergency Workers.*** G.S. 166A-14 provides that an emergency management worker is not liable for the death or injury of persons, or for damage to property, which occurs while the worker is complying with emergency management measures. The worker is not protected from liability in cases of willful misconduct, gross negligence, or bad faith. An "emergency management worker" is defined as any full or part-time paid, volunteer, or auxiliary employee of this State, other states and territories, the federal government, a neighboring country, or any political subdivision thereof, or any agency or organization providing emergency management services in this State, subject to the order or control of State or local government.

Immunity for Volunteers. G.S. 1-539.10 provides that a volunteer engaged in providing emergency services is not liable for the death or injury of persons, or for damage to property, which occurs while rendering services if the volunteer was acting in good faith and the services were reasonable, the acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing, and the acts or omissions did not occur while the volunteer was operating a motor vehicle. The immunity is waived to the extent that the volunteer has liability insurance.

BILL ANALYSIS: The bill would extend the immunity provided to emergency workers under G.S. 166A-14 to entities providing emergency services. The entity would have to be acting subject to the order or control of the State or local government, and, unlike an individual, would have to be performing services without compensation or with compensation limited to no more than actual expenses. The entity would have to be responding to an officially declared emergency.

The bill clarifies that the immunity provided under G.S. 166A-14 does not apply to an individual or an entity whose act or omission caused the emergency or necessitated the emergency management measures. It also provides that, as with volunteer immunity under G.S. 1-539.10, the private entity waives immunity to the extent that the entity has liability insurance.

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

Wendy Graf Ray substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1753*

Short Title:	Nursing Home Administrators Criminal History.	(Public)
Sponsors:	Senators Malone, Dorsett, Bingham, Forrester; Allran, Apodaca, Atwater, Berger of Franklin, Dannelly, Goss, Graham, Hartsell, Jenkins, Jones, McKissick, Nesbitt, Purcell, Soles, and Weinstein.	
Referred to:	Judiciary I (Civil).	

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE AS NURSING HOME ADMINISTRATORS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-288.01. Criminal history record checks of applicants for licensure.**

(a) The following definitions apply in this section:

(1) Applicant. – A person applying for initial licensure pursuant to either G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure pursuant to G.S. 90-286.

(2) Criminal History. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or

Services by False or Fraudulent Use of Credit Devise or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) Criminal History Record Check. – The Board may require a criminal history record check of an applicant. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board may require the applicants to obtain criminal history record checks from one or more reporting services designed by the Board to provide criminal history record checks. Each applicant is required to pay the designated service for the cost of the criminal history record check. In the alternative, the Board may provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) Convictions. – If the applicant's criminal history record check reveals one or more convictions listed under subdivision (2) of subsection (a) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(d) Denial of Licensure. – If the Board refuses to issue or renew a license based on information obtained in a criminal history record check, the Board must disclose to the person the information contained in the criminal history record check that is relevant to the Board's actions. The Board shall not provide a copy of the criminal history record check to the person. A person has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(e) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in an applicant's criminal history record check."

SECTION 2. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.11. Criminal history record checks of applicants for licensure as nursing home administrators.**

The Department of Justice may provide to the North Carolina State Board of Examiners for Nursing Home Administrators from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a nursing home administrator under Article 20 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history 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 national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1753*
PROPOSED COMMITTEE SUBSTITUTE S1753-CSTC-58 [v.1]

5/23/2008 3:23:53 PM

Short Title: Nursing Home Administrators Criminal History. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE AS NURSING HOME ADMINISTRATORS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-288.01. Criminal history record checks of applicants for licensure.**

(a) The following definitions apply in this section:

(1) Applicant. – A person applying for initial licensure pursuant to either G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure pursuant to G.S. 90-286.

(2) Criminal History. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means;

Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) Criminal History Record Check. – The Board may require a criminal history record check of an applicant. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board may require applicants to obtain criminal history record checks from one or more reporting services designated by the Board to provide criminal history record checks. Each applicant is required to pay the designated service for the cost of the criminal history record check. In the alternative, the Board may provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) Convictions. – If the applicant's criminal history record check reveals one or more convictions listed under subdivision (2) of subsection (a) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the applicant 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 applicant and the job duties of the position to be filled.
(6) The applicant's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the applicant of a crime listed in subsection (a) of this section.

(d) Denial of Licensure. – If the Board refuses to issue or renew a license based on information obtained in a criminal history record check, the Board must disclose to

the applicant the information contained in the criminal history record check that is relevant to the Board's actions. The Board shall not provide a copy of the criminal history record check to the applicant. An applicant has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(e) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in an applicant's criminal history record check."

SECTION 2. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.24. Criminal history record checks of applicants for licensure as nursing home administrators.**

The Department of Justice may provide to the North Carolina State Board of Examiners for Nursing Home Administrators from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a nursing home administrator under Article 20 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history 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 national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 1753:
Nursing Home Administrators Criminal History

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 27, 2008
Introduced by:	Sen. Malone	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S1753-CSTC		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 1753 would authorize the State Board of Examiners for Nursing Home Administrators (Board) to obtain criminal record checks for applicants for licensure as nursing home administrators.***

The PCS makes technical corrections and broadens the definition of criminal history to include federal crimes.

[As introduced, this bill was identical to H2397, as introduced by Reps. Bordsen, Farmer-Butterfield, Boylan, Pierce, which is currently in Unknown.]

CURRENT LAW: Article 20 of Chapter 90, the Nursing Home Administrator Act, establishes the State Board of Examiners for Nursing Home Administrators and provides the Board with the authority to issue licenses to qualified persons and to establish qualification criteria for such nursing home administrators. Currently, the Board does not have the authority to require criminal history record checks.

BILL ANALYSIS: The proposed committee substitute for SB 1753 would do the following:

Section 1: Would provide for criminal history record checks of applicants for licensure as a nursing home administrator.

Definitions:

1. *Applicant:* Any person applying for initial licensure as a nursing home administrator, seeking licensure based on reciprocity with other states, or renewing an existing license.

2. *Criminal History:* A history of conviction of a state or federal crime, whether misdemeanor or felony, that bears on the applicant's fitness for licensure as a nursing home administrator. A non-inclusive list of criminal offenses is included in the definition.

Criminal History Record Check: The Board may require a criminal history record check (record check) of an applicant, and refusal to consent to a record check may constitute grounds for denial of licensure.

- The Board may either
  1. Require applicants to obtain record checks from one or more reporting services designated by the Board, and require applicants to pay the designated service for the cost of the record check, or
  2. Provide to the NC Department of Justice (DOJ):
     - the fingerprints of the applicant to be checked,
     - a form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories, and
     - any other information required by DOJ
- The Board must keep all information obtained pursuant to this section confidential.
- The Board must collect any fees required by DOJ and remit those fees to the DOJ for expenses associated with the record check.

Convictions: A conviction of one or more offenses revealed by the record check shall not automatically bar licensure. The Board must consider the following factors regarding the conviction.

1. Level of seriousness of the crime.
2. Date of the crime.
3. Age of the applicant at the time of the conviction.
4. Circumstances surrounding commission of the crime, if known.
5. Nexus between the criminal conduct and the job duties to be filled.
6. Applicant's prison, jail, parole, rehabilitations, and employment records since date of commission of crime.
7. Subsequent commission by applicant of another crime listed in definition of criminal history.

Denial of Licensure: If the Board refuses to issue or renew a license based on information obtained from a record check:

- The Board must disclose to the applicant the information in the record check relevant to the Board's actions. A copy of the record check shall not be provided to the applicant.
- The applicant has a right to appear before the Board and appeal the decision. Such an appearance constitutes exhaustion of administrative remedies in accordance with Chapter 150B (Administrative Procedure Act).

Limited Immunity: The Board, its officers and employees, are immune from civil liability for actions based on information provided in an applicant's record check, if acting in good faith and in compliance with the section.

Section 2: Would provide authority for the DOJ to provide criminal histories to the Board of any applicant for licensure as a nursing home administrator.

- The Board must include in its request to the DOJ:
  - the fingerprints of the applicant to be checked,
  - a form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories, and
  - any other information required by DOJ
- The applicant's fingerprints will be forwarded to the State Bureau of Investigation for a national criminal history record check.
- The Board shall keep all information pursuant to this section confidential.
- The DOJ may charge a fee not exceeding the actual cost of locating, editing, researching, and retrieving the information to offset the cost incurred in conducting a record check.

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

BACKGROUND: SB 1753 was recommended by the North Carolina Study Commission on Aging. Pursuant to Public Law 92-544, certain standards must be met in order for the Federal Bureau of Investigation to collect and exchange criminal history record information with State and local agencies for purposes of licensing and employment, and the legislation must be reviewed by the FBI before they will consent to provide national criminal records under the statute. The legislation, as currently drafted, appears to comply with all federal requirements.

SENATE BILL 1753:
Nursing Home Administrators Criminal History

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 27, 2008
Introduced by:	Sen. Malone	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S1753-CSTC		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 1753 would authorize the State Board of Examiners for Nursing Home Administrators (Board) to obtain criminal record checks for applicants for licensure as nursing home administrators.***

The PCS makes technical corrections and broadens the definition of criminal history to include federal crimes.

[As introduced, this bill was identical to H2397, as introduced by Reps. Bordsen, Farmer-Butterfield, Boylan, Pierce, which is currently in Unknown.]

CURRENT LAW: Article 20 of Chapter 90, the Nursing Home Administrator Act, establishes the State Board of Examiners for Nursing Home Administrators and provides the Board with the authority to issue licenses to qualified persons and to establish qualification criteria for such nursing home administrators. Currently, the Board does not have the authority to require criminal history record checks.

BILL ANALYSIS: The proposed committee substitute for SB 1753 would do the following:

Section 1: Would provide for criminal history record checks of applicants for licensure as a nursing home administrator.

Definitions:

1. *Applicant:* Any person applying for initial licensure as a nursing home administrator, seeking licensure based on reciprocity with other states, or renewing an existing license.

2. *Criminal History:* A history of conviction of a state or federal crime, whether misdemeanor or felony, that bears on the applicant's fitness for licensure as a nursing home administrator. A non-inclusive list of criminal offenses is included in the definition.

Criminal History Record Check: The Board may require a criminal history record check (record check) of an applicant, and refusal to consent to a record check may constitute grounds for denial of licensure.

- The Board may either
  1. Require applicants to obtain record checks from one or more reporting services designated by the Board, and require applicants to pay the designated service for the cost of the record check, or
  2. Provide to the NC Department of Justice (DOJ):
     - the fingerprints of the applicant to be checked,
     - a form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories, and
     - any other information required by DOJ
- The Board must keep all information obtained pursuant to this section confidential.
- The Board must collect any fees required by DOJ and remit those fees to the DOJ for expenses associated with the record check.

Convictions: A conviction of one or more offenses revealed by the record check shall not automatically bar licensure. The Board must consider the following factors regarding the conviction.

1. Level of seriousness of the crime.
2. Date of the crime.
3. Age of the applicant at the time of the conviction.
4. Circumstances surrounding commission of the crime, if known.
5. Nexus between the criminal conduct and the job duties to be filled.
6. Applicant's prison, jail, parole, rehabilitations, and employment records since date of commission of crime.
7. Subsequent commission by applicant of another crime listed in definition of criminal history.

Denial of Licensure: If the Board refuses to issue or renew a license based on information obtained from a record check:

- The Board must disclose to the applicant the information in the record check relevant to the Board's actions. A copy of the record check shall not be provided to the applicant.
- The applicant has a right to appear before the Board and appeal the decision. Such an appearance constitutes exhaustion of administrative remedies in accordance with Chapter 150B (Administrative Procedure Act).

Limited Immunity: The Board, its officers and employees, are immune from civil liability for actions based on information provided in an applicant's record check, if acting in good faith and in compliance with the section.

Section 2: Would provide authority for the DOJ to provide criminal histories to the Board of any applicant for licensure as a nursing home administrator.

- The Board must include in its request to the DOJ:
  - the fingerprints of the applicant to be checked,
  - a form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories, and
  - any other information required by DOJ
- The applicant's fingerprints will be forwarded to the State Bureau of Investigation for a national criminal history record check.
- The Board shall keep all information pursuant to this section confidential.
- The DOJ may charge a fee not exceeding the actual cost of locating, editing, researching, and retrieving the information to offset the cost incurred in conducting a record check.

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

BACKGROUND: SB 1753 was recommended by the North Carolina Study Commission on Aging. Pursuant to Public Law 92-544, certain standards must be met in order for the Federal Bureau of Investigation to collect and exchange criminal history record information with State and local agencies for purposes of licensing and employment, and the legislation must be reviewed by the FBI before they will consent to provide national criminal records under the statute. The legislation, as currently drafted, appears to comply with all federal requirements.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1799*
PROPOSED COMMITTEE SUBSTITUTE S1799-PCS55706-RK-68

Short Title: DMV Employee Criminal History. - AB (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE TO THE DIVISION OF MOTOR VEHICLES OF THE DEPARTMENT OF TRANSPORTATION THE CRIMINAL HISTORY OF APPLICANTS AND EMPLOYEES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.24 Criminal record checks of applicants and for current employees who are involved in the manufacture or production of drivers licenses and identification cards.**

(a) The Department of Justice may, upon request, provide to the Department of Transportation, Division of Motor Vehicles, the criminal history of any of the following:

(1) An applicant for employment;

(2) A current employee;

(3) A contractual employee or applicant;

(4) An employee of a contractor;

if the person (i) is or will be involved in the manufacture or production of drivers licenses and identification cards, or (ii) has or will have the ability to affect the identity information that appears on drivers licenses or identification cards.

(b) Along with the request, the Division of Motor Vehicles shall provide the following to the Department of Justice:

(1) The fingerprints of the applicant.

(2) A form signed by the applicant consenting to:

a. The criminal record check.

b. The use of fingerprints.

c. Any other identifying information required by the State and National Repositories.

d. Any additional information required by the Department of Justice.

(c) 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.

(d) The Division of Motor Vehicles shall keep all information obtained pursuant to this section confidential.

(e) 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1799*

Short Title:	DMV Employee Criminal History. - AB	(Public)
Sponsors:	Senators Jenkins; and Jones.	
Referred to:	Judiciary I (Civil).	

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE TO THE DIVISION OF MOTOR VEHICLES OF THE DEPARTMENT OF TRANSPORTATION THE CRIMINAL HISTORY OF APPLICANTS AND EMPLOYEES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.24 Criminal record checks of applicants and for current employees who are involved in the manufacture or production of drivers license and identification cards.**

The Department of Justice may, upon request, provide to the Department of Transportation, Division of Motor Vehicles, the criminal history of any applicant or current employee, or contractual employee or applicant, or employee of a contractor, who is or will be involved in the manufacture or production of drivers licenses and identification cards, or who has the ability to affect the identity information that appears on drivers licenses or identification cards. Along with the request, the Division of Motor Vehicles shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division of Motor Vehicles 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.

SENATE BILL 1799:
DMV Employee Criminal History. - AB

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 27, 2008
Introduced by:	Sen. Jenkins	**Summary by:**	Hal Pell
Version:	PCS to First Edition		Committee Counsel

SUMMARY: ***This act authorizes the Department of Justice to provide criminal record checks of specified employees and applicants of the Department of Transportation. This act is effective when it becomes law.***

[As introduced, this bill was identical to H2319, as introduced by Rep. Cole, which is currently in House Transportation, if favorable, Judiciary III.]

BILL ANALYSIS:

The act authorizes the Department of Justice (DOJ) to provide criminal record checks for employees and applicants for employment with the Department of Motor Vehicles, Department of Transportation (DMV), when the subject of the check would be involved in creating drivers licenses or identification cards, or providing information for their manufacture. The act specifies the information that DMV must provide to the DOJ, including fingerprints, and a signed consent form for the check. The DOJ is authorized to collect a fee for providing the criminal record check.

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

VISITOR REGISTRATION SHEET

Judiciary I (Civil) May 27, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Lori Kroll	NCDOT
Wayne Hurder	DOT - DMV
Brett White	AG DOJ
Chris Brooks	DOJ
Johanna Reese	DOT
Taiyyaba Qureshi	Supreme Court
Rob Munro	Supreme Court
Leah Devlin	DHHS- DPH
Chris Hoke	DHHS-DPH
David Crawford	AIA NC
Annie Nelson	NC Supreme Court

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — May 27, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Brandon Leebrick	NC Supreme Court
JENNIFER LEISTEN	NC SUPREME COURT
Bennetta Whitfield	NC Supreme Court
Angelia Duncan	NC Supreme Court
David Morris	NC Supreme Court
Kristen Smith	NC Supreme Court
[illegible]	NC Supreme Ct.
Maria Lapetina	NC Supreme Court
Bert Phillips	NC Supreme Ct
Barbara Conley	BSCOA
Paul Pulley	NCATL

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — May 27, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NMRS
Doug Hedon	Williams Mullen
Cameron Hanby	Electricities of NC
W. Daniel Auburn	Electricities
Mia Bailey	Electricities
John Maddy	Cozen O'Connor
Wendy Kelly	Sanford LLP

VISITOR REGISTRATION SHEET

Judiciary I (Civil) May 27, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Selena Childs	CFTF
Tom Villaglowo	CFTF
Bue Hall	UNC-CH HSRC
Daniel Baum	Kennedy Covington
John Hoomani	NCDOL
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Emily Kirby	NC Supreme Ct.
[illegible]	NCSC
Scott Murray	"
Andrew Freeman	"
R. Jeremy Sugg	"
[illegible]	Nelson Mullins

VISITOR REGISTRATION SHEET

Judiciary I (Civil) May 27, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Adam Sanders	NC COA
[illegible]	[illegible]
Tracy Kimbrell	Parker Poe
BRUCE THOMPSON	PARKER POE
Lisa Vick	Gas Mizer

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1684*

Short Title:	Liability Protection/Private Orgs/Emergen.	(Public)
Sponsors:	Senators Purcell; Atwater, Dannelly, and Snow.	
Referred to:	Judiciary I (Civil).	

May 20, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION FOR PRIVATE ASSOCIATIONS, PRIVATE CORPORATIONS, AND PRIVATE NONPROFIT ENTITIES AND ORGANIZATIONS WHEN RESPONDING TO IN-STATE EMERGENCIES, AS RECOMMENDED BY THE PUBLIC HEALTH STUDY COMMISSION.

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~~ worker, individual, firm, partnership, association, or corporation 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. The immunity provided in this subsection applies only to:

(1) Individuals, firms, partnerships, associations, or corporations 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; and

(2) Firms, partnerships, associations or corporations, performing emergency management services without compensation or with compensation limited to no more than actual expenses.

The immunity provided in this subsection shall not apply to any private individual, firm, partnership, association, or corporation or to any employee or agent of such individual, firm, partnership, association, or corporation whose act or omission caused in whole or

in part the actual or imminent disaster, emergency or whose act or omission necessitated emergency management measures. G.S. 1-539.10(b) does not apply to the immunity provided in this subsection.

(b) The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, 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 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 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 the person would ordinarily possess if performing 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 2007

S 1

SENATE BILL 1776*

Short Title:	Liability Protection for Private Entities.	(Public)
Sponsors:	Senators Nesbitt, Malone, Boseman, Apodaca, Atwater, Brown, Dorsett, Goss, Hartsell, Jenkins, Jones, Kerr, Preston, Rand, Snow; and Queen.	
Referred to:	Judiciary I (Civil).	

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION FOR PRIVATE ASSOCIATIONS, PRIVATE CORPORATIONS, AND PRIVATE NONPROFIT ENTITIES AND ORGANIZATIONS WHEN RESPONDING TO IN-STATE INCIDENTS, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

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~~ worker, firm, partnership, association, or corporation 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.

(a1) The immunity provided to firms, partnerships, associations, or corporations under subsection (a) of this section is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses, and one of the following applies:

a. Emergency management services are provided at any place in this State during a state of disaster or state of emergency declared by the Governor pursuant to this Article or

G.S. 14-288.15, and the services are provided under the direction and control of the Secretary of the Department of Crime Control and Public Safety pursuant to G.S. 166A-5, 166A-6, and 143B-476, or the Governor.

b. Emergency management services are provided during a local state of emergency declared pursuant to Article 36A of Chapter 14 of the General Statutes, and the services are provided under the direction and control of the governing body of any municipality under G.S. 14-288.12 and G.S. 166A-8, the governing body of any county under G.S. 14-288.13 and G.S. 166A-8, or the chair of any board of county commissioners under G.S. 14-288.14 and G.S. 166A-8.

c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division of Emergency Management, the Division of Public Health, or the governing body of each county or municipality under G.S. 166A-7 and G.S. 166A-8 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent disaster or emergency, or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence.

(b) The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, 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 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 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 the person would ordinarily possess if performing 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 2007

HOUSE BILL 1113

Short Title:	State Tort Claims/Public Duty Doctrine.	(Public)
Sponsors:	Representatives Glazier, Faison (Primary Sponsors); and Harrison.	
Referred to:	Judiciary II.	

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN AFFIRMATIVE DEFENSE FOR CIVIL ACTIONS UNDER THE STATE TORT CLAIMS ACT TO THOSE CLAIMS IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF THE ALLEGED NEGLIGENT FAILURE OF LAW ENFORCEMENT TO PROTECT CLAIMANTS FROM THE MISCONDUCT OF OTHERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.**

The public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which the claim is asserted if and only if the injury of the claimant is the result of the alleged negligent failure of law enforcement to protect the claimant from the misconduct of others."

SECTION 2. This act is effective when it becomes law and applies to judgments entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1736*

Short Title:	Child Passenger Safety Technician Liability.	(Public)
Sponsors:	Senators Purcell; Allran, Atwater, Dannelly, Dorsett, Jones, Malone, and Weinstein.	
Referred to:	Judiciary I (Civil).	

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO LIMIT LIABILITY FOR THE ACTS OF CHILD PASSENGER SAFETY TECHNICIANS WHEN ACTING IN GOOD FAITH AND WITHIN THE SCOPE OF THEIR TRAINING AS RECOMMENDED BY THE 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:

"**§ 20-137.5. Child passenger safety technician; limitation of liability.**

(a) Certified Child Passenger Safety Technician. – A certified child passenger safety technician is an individual who has successfully completed the U.S. Department of Transportation, National Highway Traffic Safety Administration's (NHTSA) National Standardized Child Passenger Safety Certification Training Program and who maintains a current child passenger safety technician or technician instructor certification through the current certifying body for the National Child Passenger Safety Training Program as designated by the National Highway Traffic Safety Administration.

(b) Limitation of Liability. – A certified child passenger safety technician or sponsoring organization shall not be liable to any person as a result of any act or omission that occurs solely in the inspection, installation, or adjustment of a child safety seat, or in providing education regarding the installation or adjustment of a child safety seat if the child passenger safety technician or sponsoring organization acts in good faith and within the scope of training for which the technician is currently certified, unless the act or omission constitutes willful and wanton misconduct or gross negligence."

SECTION 2. This act becomes effective October 1, 2008.

Ask to take 11269 pbo. S 1736

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, May 27, 2008
Immediately After Session
Room 1027

1 Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 1113	State Tort Claims/Public Duty Doctrine	Representative Glazier Representative Faison
SB 1684	Liability Protection/Private Orgs/Emergen.	Senator Purcell
SB 1766	Liability Protection for Private Entities	Senator Rand Hoyle
SB 1776	Liability Protection for Private Entities	Senator Nesbitt
SB 1736	Child Passenger Safety Technician Liability	Senator Purcell
SB 1753	Nursing Home Administrators Criminal History	Senator Malone
SB 1799	DMV Employee Criminal History	Senator Jenkins

Adjournment.

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

June 3, 2008
10 a.m.

MINUTES

The Senate Judiciary I (Civil) Committee met Tuesday, June 3, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 10:10 a.m.

In attendance were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator Tony Rand, Senator Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw and Hal Pell. Committee assistant Jessica Kozma Bennett and research assistant Denise Huntley were also present.

House Bill 933
The Jessica Lunsford Act of North Carolina

Senate Bill 1805 was pulled from the day's agenda. Senator Rand, sponsor of Senate Bill 2080 had not yet arrived at the meeting. Chairman Nesbitt called on staff to begin the meeting discussing House Bill 933, the Jessica Lunsford Act of North Carolina.

A Proposed Committee Substitute was distributed to membership. The PCS was adopted for discussion by a motion by Senator Brunstetter. Chairman Nesbitt called on staff to explain changes to the PCS.

Mr. Pell told the committee that changes to the Bill were solely of a technical nature. Sentencing changes occur in Sections 1 and 2 of the Bill, providing a 25 years to life sentence for a person over 18-years-old convicted of raping a person under the age of 13 years.

Chairman Nesbitt asked the committee for questions or discussion.

Vice Chairman Clodfelter asked if changes repealed current statues. Mr. Pell answered that it did, and that an offender under the age of 17 would fall under current statues. Over the age of 18 would fall under the new changes to the PCS. Senator Brock asked if the changes included types of sodomy. Mr. Pell answered that sodomy is not included in the definition of rape and that rape is defined as purely vaginal intercourse.

Senator Tillman asked if there is anything included in the PCS for younger offenders. Mr. Pell said that statutes remain the same for juvenile offenders.

Chairman Nesbitt then told the committee that the House Bill passed after the session's crossover date, but remains eligible under Rules because the Bill has a serial referral to the Appropriations Committee. He added that he didn't know whether this was done intentionally and said that if the Bill passes from Judiciary Committee it will then move to appropriations.

As Mr. Pell continued explaining changes to the PCS and Chairman Nesbitt clarified that changes were to further punishments to existing sexual offense statutes.

Discussion ensued regarding retroactivity for convicted sexual offenders and Chairman Nesbitt noted that there is a problem with retroactivity. Senator Rand asked if the PCS would apply for those registered on sex offender registries, Chairman Nesbitt asked if there would be *ex post facto* problems upon enactment of the Bill. Mr. Pell said that being registered on a sex offender registry does not make criminal activity. But he added that there could be complications with registrants and that such issues may be addressed during the 2009 Long Session.

Vice Chairman Clodfelter questioned language on page 6, line 17, curious about what ramifications might occur. Chairman Nesbitt asked if there were specific provisions for schools, churches and other places where children congregate. Mr. Pell said that provision does not include schools. Senator Tillman said a period should be inserted after the word "congregate." Senator Jenkins agreed and asked to change the provision. Vice Chairman Clodfelter then said that current law says a sexual offender may not live near a school but can "hang out" there. Senator Rand said that if a sexual offender walks across a school yard late at night, with no children there, it would be a Class H felony. Vice Chairman Clodfelter said that the House version included specific places where children congregate. Senator Rand said he thought such definition was better. Senator Hoyle asked to offer such a change as an amendment.

Senator Brown said he was concerned about how day care centers would get information about the Bill and its provisions. Senator Tillman said that when a new day care center applied for a business license, there should be information readily available. Vice Chairman Berger asked if there was a penalty for a day care center who fails to get a license. Mr. Pell said there was not. Senator Berger followed up and asked if there were civil penalties, said that what was drafted was what the Bill covered.

Mr Pell continued reviewing changes to the PCS. Senator Malone asked about a reference in Section 16 of the Bill regarding GPS monitoring. Mr. Pell answered that using GPS required a bracelet or anklet placed on the offender's person and is monitored by law enforcement.

Senator Tillman asked about background checks performed by school systems, adding that some systems were better about requiring background checks than others. Mr. Pell said that in the PCS there would be provisions requiring systems to perform annual background checks. If an employee is determined to be on the registry, that employee may not work with students. He continued that the PCS may need to be amended to exclude persons who do yard maintenance and other jobs where there is not contact with students.

Representative Clary, a Bill sponsor, thanked the Committee for improving the Bill. Chairman Nesbitt then recognized Senator Hoyle who said that Jessica Lunsford, that namesake of the bill, attended school in Dallas, North Carolina.

An amendment by Senator Rand, to amend Page 10 Line 12 passed unanimously. A second amendment was offered by Senator Hoyle Page 6, Lines 16 though 18. The amendment listed places where children congregate and forbids sexual offenders from visiting such places. Senator Rand asked if this included a place like McDonald's. Chairman Nesbitt said that the amendment includes "pretty much everything." The amendment was held and the meeting was adjourned at 10:57 a.m.

Respectfully submitted,

Senator Martin L. Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

PROPOSED SENATE COMMITTEE SUBSTITUTE H933-CSRK-69 [v.7]

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN CRIMINAL OFFENSES OF RAPE OR SEXUAL OFFENSE COMMITTED AGAINST A CHILD ARE PUNISHABLE BY EITHER LIFE IMPRISONMENT WITHOUT PAROLE OR A MANDATORY ACTIVE SENTENCE OF TWENTY-FIVE YEARS AND LIFETIME SATELLITE-BASED MONITORING, TO INCREASE THE CRIMINAL PENALTIES FOR SEXUAL EXPLOITATION OF A MINOR AND PROMOTING PROSTITUTION OF A MINOR, TO AMEND THE SEX OFFENDER REGISTRATION REQUIREMENTS TO BE MORE STRINGENT, TO REQUIRE COMMUNITY NOTIFICATION REGARDING THE PRESENCE OF A SEXUALLY VIOLENT PREDATOR OR REPEAT SEX OFFENDER, TO AMEND THE LAW REGARDING BAIL FOR VIOLATIONS OF PROBATION AND POST-RELEASE SUPERVISION, TO CREATE A NEW CRIMINAL OFFENSE THAT MAKES IT UNLAWFUL FOR A SEX OFFENDER TO BE ON CERTAIN PREMISES, AND TO REQUIRE SEX OFFENDER REGISTRIES CHECKS OF CONTRACTUAL PERSONNEL BEFORE ALLOWING THEM TO HAVE DIRECT INTERACTION WITH STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.2A. Rape of a child; adult offender.**

(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) Any person who commits an offense in violation of this section is guilty of a Class B1 felony. Notwithstanding G.S. 15A-1340.10 or any other provision of law, the

court, in its discretion, shall impose one of the following sentences on a person convicted of an offense under this section:

(1) Life imprisonment without parole; or

(2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(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.

(d) The offense under G.S. 14-27.2(a)(1) is a lesser included offense of the offense in this section."

SECTION 2. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.4A. Sexual offense with a child; adult offender.**

(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

(b) Any person who commits an offense in violation of this section is guilty of a Class B1 felony. Notwithstanding G.S. 15A-1340.10 or any other provision of law, the court, in its discretion, shall impose one of the following sentences on a person convicted of an offense under this section:

(1) Life imprisonment without parole; or

(2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section."

SECTION 3. G.S. 14-190.16 reads as rewritten:

"**§ 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:

. . .

(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 4. G.S. 14-190.17 reads as rewritten:

"**§ 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:

. . .

(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class E felony."

SECTION 5. G.S. 14-190.17A reads as rewritten:

"**§ 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.

. . .

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class H felony."

SECTION 6. G.S. 14-190.18 reads as rewritten:

"**§ 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.~~Class C felony."

SECTION 7. 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~~ 30-year registration requirement for persons convicted of certain offenses against minors or sexually violent ~~offenses.~~offenses with an opportunity for those persons to petition in superior court to shorten their registration time period after 10 years of registration. 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.

. . . ."

SECTION 8. G.S. 14-208.7 reads as rewritten:

"**§ 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~~ three business 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~~ three business 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 at least ~~10 years~~30 years following the date of initial county ~~registration.~~registration unless the person, after 10 years of

registration, successfully petitions the superior court to shorten his or her registration time period under G.S. 14-208.12A.

. . . ."

SECTION 9. 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~~ the third business 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 intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least ~~10 days~~ three business days before the date the person intends to leave this State to establish residence in another state or jurisdiction. The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

(1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.

(2) The sheriff shall 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 information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within ~~10 days~~three business days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(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, within ~~10 days,~~three business days report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. 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, within ~~10 days,~~three business days 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. The sheriff shall immediately forward this information to the Division."

SECTION 10. 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 semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that 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 in person to the sheriff within ~~10 days~~three business 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) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall 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~~three business days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the 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~~three business days 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 11. G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Request for termination of registration requirement.**

(a) ~~A~~ Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court in the district where the person resides to terminate the 30-year registration requirement ~~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.

. . . ."

SECTION 12. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.18. Sex offender unlawfully on premises.**

(a) It is unlawful for any person convicted of an offense that requires registration under this Article to be on a premise that a reasonable person knows is a place where children regularly congregate without adult supervision.

(b) A violation of this section is a Class H felony."

SECTION 13. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.25A. Community and public notification.**

The licensee for each licensed day care center, and the principal of each elementary school, middle school, and high school shall register with the North Carolina Sex Offender and Public Protection Registry to receive e-mail notification when a registered sex offender moves within a one-mile radius of the licensed day care center or school."

SECTION 14. G.S. 14-208.27 reads as rewritten:

"**§ 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~~the third business 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."

SECTION 15. G.S. 14-208.28(2) reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

. . .

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within ~~10 days~~three business days after the receipt of the form.

. . . ."

SECTION 16. G.S. 14-208.40(a) reads as rewritten:

"(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~~ three 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. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.43.

(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) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(3) Any offender who is convicted of any of the following offenses and sentenced to a term of 25 years active punishment and satellite-based monitoring for the duration of the defendant's natural life pursuant to:

a. G.S. 14-24.2A(Rape of a child by an adult offender).

b. G.S. 14-24.4A(Sexual offense with a child by an adult offender)."

SECTION 16.1. G.S. 14-208.40A, as enacted by S.L. 2007-213, reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, ~~or (iv)~~ (iv) the conviction offense was a violation of G.S. 14-27.2A, or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator

pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, ~~or (iv)~~ (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, ~~or~~ has committed an aggravated offense, or was convicted of G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated ~~offense,~~ offense or a violation of G.S. 14-27.2A or 14-27.4A, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 16.2. G.S. 14-208.40B(c), as enacted by Section 3 of S.L. 2007-213, reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, ~~or~~ (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. 14-27.2A or G.S. 14-27.4A, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 17. G.S. 14-208.41 is amended by adding a new subsection to read:

"(c) Any person described by G.S. 14-208.40(a)(3), upon completion of the 25 years of active punishment 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 enroll in the satellite-based monitoring program for the entire period of post-release supervision and shall remain enrolled in the satellite-based monitoring

program for the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.42."

SECTION 18. G.S. 14-208.43(a) reads as rewritten:

"(a) An offender described by G.S. ~~14-308.40(a)(1)~~14-208.40(a)(1) or G.S. 14-208.40(a)(3) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence."

SECTION 19. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail."

SECTION 20. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(b2) Bail Following Arrest for Violation of Post-Release Supervision if Releasee is a Sex Offender. – Notwithstanding subsection (b) of this section, if the releasee has been convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes and is arrested for a violation in accordance with this section, the releasee shall be detained without bond until the preliminary hearing is conducted."

SECTION 21. Part 6 of Article 22 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-332.1. Sex offender registries checks for certain contractual personnel.**

(a) For purposes of this section, the term "contractual personnel" includes any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job.

(b) Each local board of education shall require, as a term of any contract the local board of education enters, that employers of a person who is contractual personnel conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. As a term of any contract, a local board of education shall prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration

Program, and the National Sex Offender Registry from having direct interaction with students."

SECTION 22. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The maintenance of the registration period of 30 years required by G.S. 14-208.7, as amended by Section 8 of this act, applies to registrations made on or after December 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 933

Committee Substitute Favorable 7/28/07

Senate Judiciary I (Civil) Committee Substitute Adopted 6/4/08

Short Title: Jessica Lunsford Act for NC. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN CRIMINAL OFFENSES OF RAPE OR SEXUAL OFFENSE COMMITTED AGAINST A CHILD ARE PUNISHABLE BY EITHER LIFE IMPRISONMENT WITHOUT PAROLE OR A MANDATORY ACTIVE SENTENCE OF TWENTY-FIVE YEARS AND LIFETIME SATELLITE-BASED MONITORING, TO INCREASE THE CRIMINAL PENALTIES FOR SEXUAL EXPLOITATION OF A MINOR AND PROMOTING PROSTITUTION OF A MINOR, TO AMEND THE SEX OFFENDER REGISTRATION REQUIREMENTS TO BE MORE STRINGENT, TO REQUIRE COMMUNITY NOTIFICATION REGARDING THE PRESENCE OF A SEXUALLY VIOLENT PREDATOR OR REPEAT SEX OFFENDER, TO AMEND THE LAW REGARDING BAIL FOR VIOLATIONS OF PROBATION AND POST-RELEASE SUPERVISION, TO CREATE A NEW CRIMINAL OFFENSE THAT MAKES IT UNLAWFUL FOR A SEX OFFENDER TO BE ON CERTAIN PREMISES, AND TO REQUIRE SEX OFFENDER REGISTRIES CHECKS OF CONTRACTUAL PERSONNEL BEFORE ALLOWING THEM TO HAVE DIRECT INTERACTION WITH STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.2A. Rape of a child; adult offender.**

(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) Any person who commits an offense in violation of this section is guilty of a Class B1 felony. Notwithstanding G.S. 15A-1340.10 or any other provision of law, the court, in its discretion, shall impose one of the following sentences on a person convicted of an offense under this section:

(1) Life imprisonment without parole; or
(2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(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.

(d) The offense under G.S. 14-27.2(a)(1) is a lesser included offense of the offense in this section."

SECTION 2. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.4A. Sexual offense with a child; adult offender.**

(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

(b) Any person who commits an offense in violation of this section is guilty of a Class B1 felony. Notwithstanding G.S. 15A-1340.10 or any other provision of law, the court, in its discretion, shall impose one of the following sentences on a person convicted of an offense under this section:

(1) Life imprisonment without parole; or
(2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section."

SECTION 3. G.S. 14-190.16 reads as rewritten:

"**§ 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:

...

(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 4. G.S. 14-190.17 reads as rewritten:

"**§ 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:

...

(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class E felony."

SECTION 5. G.S. 14-190.17A reads as rewritten:

"**§ 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.

...

(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class H felony."

SECTION 6. G.S. 14-190.18 reads as rewritten:

"**§ 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.~~Class C felony."

SECTION 7. 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~~ 30-year registration requirement for persons convicted of certain offenses against minors or sexually violent ~~offenses.~~offenses with an opportunity for those persons to petition in superior court to shorten their registration time period after 10 years of registration. 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.

...."

SECTION 8. G.S. 14-208.7 reads as rewritten:

"**§ 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~~ three business 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~~ three business 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 at least ~~10 years~~30 years following the date of initial county ~~registration.~~registration unless the person, after 10 years of

registration, successfully petitions the superior court to shorten his or her registration time period under G.S. 14-208.12A.

...."

SECTION 9. 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~~ the third business 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 intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least ~~10 days~~ three business days before the date the person intends to leave this State to establish residence in another state or jurisdiction. The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

(1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.

(2) The sheriff shall 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 information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within ~~10 days~~three business days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(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, within ~~10 days,~~three business days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. 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, within ~~10 days,~~three business days, 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. The sheriff shall immediately forward this information to the Division."

SECTION 10. 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 semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that 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 in person to the sheriff within ~~10 days~~three business 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) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall 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~~three business days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the 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~~three business days 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 11. G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Request for termination of registration requirement.**

(a) ~~A~~ Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court in the district where the person resides to terminate the 30-year registration requirement ~~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.

...."

SECTION 12. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.18. Sex offender unlawfully on premises.**

(a) It shall be unlawful for any person required to register under this Article, if the offense requiring registration is described in subsection (b) of this section, to be at any of the following locations:

(1) On the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds.

(2) Within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that is not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.

(3) At any place where minors gather for regularly scheduled educational, recreational, or social programs.

(b) Subsection (a) of this section is applicable only to persons required to register under this Article who have committed any of the following offenses:

(1) Any offense in Article 7A of this Chapter.

(2) Any offense where the victim of the offense was under the age of 16 years at the time of the offense.

(c) A violation of this section is a Class H felony."

SECTION 13. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.25A. Community and public notification.**

The licensee for each licensed day care center and the principal of each elementary school, middle school, and high school shall register with the North Carolina Sex Offender and Public Protection Registry to receive e-mail notification when a registered sex offender moves within a one-mile radius of the licensed day care center or school."

SECTION 14. G.S. 14-208.27 reads as rewritten:

"**§ 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~~the third business 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."

SECTION 15. G.S. 14-208.28(2) reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

...

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within ~~10 days~~three business days after the receipt of the form.

...."

SECTION 16. G.S. 14-208.40(a) reads as rewritten:

"(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~~ three 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. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.43.

(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) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(3) Any offender who is convicted of any of the following offenses and sentenced to a term of 25 years active punishment and satellite-based monitoring for the duration of the defendant's natural life pursuant to:

a. G.S. 14-24.2A(Rape of a child by an adult offender).

b. G.S. 14-24.4A(Sexual offense with a child by an adult offender)."

SECTION 16.1. G.S. 14-208.40A, as enacted by S.L. 2007-213, reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, ~~or (iv)~~ (iv) the conviction offense was a violation of G.S. 14-27.2A, or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, ~~or (iv)~~ (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, ~~or~~ has committed an aggravated offense, or was convicted of G.S. 14-27.2A or G.S. 14-27.4A the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated ~~offense,~~ offense or a violation of G.S. 14-27.2A or G.S. 14-27.4A and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 16.2. G.S. 14-208.40B(c), as enacted by Section 3 of S.L. 2007-213, reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, ~~or~~ (iii) the

conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. 14-27.2A or G.S. 14-27.4A, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 17. G.S. 14-208.41 is amended by adding a new subsection to read:

"(c) Any person described by G.S. 14-208.40(a)(3), upon completion of the 25 years of active punishment 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 enroll in the satellite-based monitoring program for the entire period of post-release supervision and shall remain enrolled in the satellite-based monitoring program for the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.42."

SECTION 18. G.S. 14-208.43(a) reads as rewritten:

"(a) An offender described by G.S. ~~14-308.40(a)(1)~~14-208.40(a)(1) or G.S. 14-208.40(a)(3) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence."

SECTION 19. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law

establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail."

SECTION 20. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(b2) Bail Following Arrest for Violation of Post-Release Supervision if Releasee is a Sex Offender. – Notwithstanding subsection (b) of this section, if the releasee has been convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes and is arrested for a violation in accordance with this section, the releasee shall be detained without bond until the preliminary hearing is conducted."

SECTION 21. Part 6 of Article 22 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-332.1. Sex offender registries checks for certain contractual personnel.**

(a) For purposes of this section, the term 'contractual personnel' includes any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job.

(b) Each local board of education shall require, as a term of any contract the local board of education enters, that employers of a person who is contractual personnel conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. As a term of any contract, a local board of education shall prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students."

SECTION 21.1. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 22. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The maintenance of the registration period of 30 years required by G.S. 14-208.7, as amended by Section 8 of this act, applies to registrations made on or after December 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 933

Committee Substitute Favorable 7/28/07

Short Title: Jessica Lunsford Act for NC. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN CRIMINAL OFFENSES OF RAPE OR FIRST-DEGREE SEXUAL OFFENSE COMMITTED AGAINST A CHILD ARE PUNISHABLE BY EITHER LIFE IMPRISONMENT WITHOUT PAROLE OR A MANDATORY ACTIVE SENTENCE OF TWENTY-FIVE YEARS AND LIFETIME SATELLITE-BASED MONITORING, TO INCREASE THE CRIMINAL PENALTIES FOR SEXUAL EXPLOITATION OF A MINOR AND PROMOTING PROSTITUTION OF A MINOR, TO AMEND THE SEX OFFENDER REGISTRATION REQUIREMENTS TO BE MORE STRINGENT, TO REQUIRE COMMUNITY NOTIFICATION REGARDING THE PRESENCE OF A SEXUALLY VIOLENT PREDATOR OR REPEAT SEX OFFENDER, TO AMEND THE LAW REGARDING BAIL FOR VIOLATIONS OF PROBATION AND POST-RELEASE SUPERVISION, TO CREATE A NEW CRIMINAL OFFENSE THAT MAKES IT UNLAWFUL FOR A SEX OFFENDER TO BE ON CERTAIN PREMISES, AND TO REQUIRE SEX OFFENDER REGISTRIES CHECKS OF CONTRACTUAL PERSONNEL BEFORE ALLOWING THEM TO HAVE DIRECT INTERACTION WITH STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.2 reads as rewritten:

"**§ 14-27.2. First-degree rape.**

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

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

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

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
b. Inflicts serious personal injury upon the victim or another person; or
c. The person commits the offense aided and abetted by one or more other persons.

(a1) A person is guilty of rape in the first degree if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

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

(b1) Any person who commits an offense defined in subsection (a1) of this section is guilty of a Class B1 felony. Notwithstanding G.S. 15A-1340.17 or any other provision of law, the court, in its discretion, shall impose one of the following sentences on a person convicted of an offense under subsection (a1) of this section:

(1) Life imprisonment without parole; or
(2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(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."

SECTION 2. G.S. 14-27.4 reads as rewritten:

"**§ 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.

(a1) A person is guilty of sexual offense in the first degree if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

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

(b1) Any person who commits an offense defined in subsection (a1) of this section is guilty of a Class B1 felony. Notwithstanding G.S. 15A-1340.17 or any other provision of law, the court, in its discretion, shall impose one of the following sentences on a person convicted of an offense under subsection (a1) of this section:

(1) Life imprisonment without parole; or

(2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 3. G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 4. G.S. 14-190.17(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class E felony."

SECTION 5. G.S. 14-190.17A(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class H felony."

SECTION 6. G.S. 14-190.18(c) reads as rewritten:

"(c) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 7. 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~~ 30-year registration requirement for persons convicted of certain offenses against minors or sexually violent ~~offenses.~~offenses with an opportunity for those persons to petition in superior court to shorten their registration time period after 10 years of registration. 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 8. G.S. 14-208.7 reads as rewritten:

"**§ 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~~ three business 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~~ three business 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 at least ~~10 years~~30 years following the date of initial county ~~registration.~~registration unless the person, after 10 years of registration, successfully petitions the superior court to shorten his or her registration time period under G.S. 14-208.12A.

(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.

(d) 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. The sheriff shall provide the registrant with written proof of registration at the time of registration."

SECTION 9. 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~~ the third business 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 intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least ~~10 days~~ three business days before the date the person intends to leave this State to establish residence in another state or jurisdiction. The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

(1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.

(2) The sheriff shall 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 information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within ~~10 days~~three business days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the

sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(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, within ~~10 days,~~three business days report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. 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, within ~~10 days,~~three business days 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. The sheriff shall immediately forward this information to the Division."

SECTION 10. 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 semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that 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 in person to the sheriff within ~~10 days~~three business 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) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall 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~~three business days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the 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~~three business days 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 11. G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Request for termination of registration requirement.**

(a) ~~A~~ Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court in the district where the person resides to terminate the 30-year registration requirement ~~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.

(a1) The court may grant the relief if:

(1) The petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence,

(2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and

(3) The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

(a2) The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The petitioner may present evidence in support of the petition and the district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied.

(a3) If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the clerk of court shall forward a certified copy of the order to the Division to have the person's name removed from the registry.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated by the court under subsection (a1) of this section."

SECTION 12. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.18. Unlawful for sex offender to be on premises that a reasonable person knows are places where children regularly congregate without adult supervision.**

(a) It is unlawful for any person convicted of an offense that requires registration under this Article to be on a premise that a reasonable person knows is a place where children regularly congregate without adult supervision.

(b) A violation of this section is a Class H felony."

SECTION 13. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.25A. Community and public notification.**

The licensee for each licensed day care center, and the principal of each elementary school, middle school, and high school shall register with the North Carolina Sex Offender and Public Protection Registry to receive e-mail notification when a registered sex offender moves within a one-mile radius of the licensed day care center or school."

SECTION 14. G.S. 14-208.27 reads as rewritten:

"**§ 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~~the third business 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."

SECTION 15. G.S. 14-208.28 reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

The information provided to the sheriff shall be verified semiannually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration date and six months after that 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~~three business 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."

SECTION 16. G.S. 14-208.40(a) reads as rewritten:

"(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~~ three 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. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.43.

(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) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(3) Any offender who is convicted of any of the following offenses and sentenced to a term of 25 years active punishment and satellite-based monitoring for the duration of the defendant's natural life pursuant to:

a. G.S. 14-24.2(a1)(First-degree rape of a child less than 13 years of age by an offender who is at least 18 years of age).

b. G.S. 14-24.4(a1)(First-degree sexual offense of a child less than 13 years of age by an offender who is at least 18 years of age)."

SECTION 17. G.S. 14-208.41 is amended by adding a new subsection to read:

"(c) Any person described by G.S. 14-208.40(a)(3), upon completion of the 25 years of active punishment 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 enroll in the satellite-based monitoring program for the entire period of post-release supervision and shall remain enrolled in the satellite-based monitoring program for the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.42."

SECTION 18. G.S. 14-208.42 reads as rewritten:

"**§ 14-208.42. Lifetime registration offenders required to submit to satellite-based monitoring for life and to continue on unsupervised probation upon completion of sentence.**

Notwithstanding any other provision of law, when the court sentences an offender who is in the category described by G.S. 14-208.40(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), or an offender who is in the category described by G.S. 14-208.40(a)(3), and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender, upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, continue to be enrolled in the satellite-based monitoring program for the offender's life and be placed on unsupervised probation unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.43."

SECTION 19. G.S. 14-208.43(a) reads as rewritten:

"(a) An offender described by G.S. ~~14-308.40(a)(1)~~14-208.40(a)(1) or G.S. 14-208.40(a)(3) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence."

SECTION 20. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail."

SECTION 21. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(b1) Bail Following Arrest for Violation of Post-Release Supervision if Releasee is a Sex Offender. – Notwithstanding subsection (b) of this section, if the releasee has been convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes and is arrested for a violation in accordance with this section, the releasee shall be detained without bond until the preliminary hearing is conducted."

SECTION 22. Part 6 of Article 22 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-332A. Sex offender registries checks for certain contractual personnel.**

(a) For purposes of this section, the term "contractual personnel" includes any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job.

(b) Each local board of education shall require, as a term of any contract the local board of education enters, that employers of a person who is contractual personnel conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. As a term of any contract, a local board of education shall prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students."

SECTION 23. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. The maintenance of the registration period of 30 years required by G.S. 14-208.7, as amended by Section 8 of this act, applies to registrations made on or after December 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 933

Committee Substitute Favorable 7/28/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H933-CSRK-69 [v.8]

6/2/2008 4:21:05 PM

Short Title: Jessica Lunsford Act for NC. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN CRIMINAL OFFENSES OF RAPE OR SEXUAL OFFENSE COMMITTED AGAINST A CHILD ARE PUNISHABLE BY EITHER LIFE IMPRISONMENT WITHOUT PAROLE OR A MANDATORY ACTIVE SENTENCE OF TWENTY-FIVE YEARS AND LIFETIME SATELLITE-BASED MONITORING, TO INCREASE THE CRIMINAL PENALTIES FOR SEXUAL EXPLOITATION OF A MINOR AND PROMOTING PROSTITUTION OF A MINOR, TO AMEND THE SEX OFFENDER REGISTRATION REQUIREMENTS TO BE MORE STRINGENT, TO REQUIRE COMMUNITY NOTIFICATION REGARDING THE PRESENCE OF A SEXUALLY VIOLENT PREDATOR OR REPEAT SEX OFFENDER, TO AMEND THE LAW REGARDING BAIL FOR VIOLATIONS OF PROBATION AND POST-RELEASE SUPERVISION, TO CREATE A NEW CRIMINAL OFFENSE THAT MAKES IT UNLAWFUL FOR A SEX OFFENDER TO BE ON CERTAIN PREMISES, AND TO REQUIRE SEX OFFENDER REGISTRIES CHECKS OF CONTRACTUAL PERSONNEL BEFORE ALLOWING THEM TO HAVE DIRECT INTERACTION WITH STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.2A. Rape of a child; adult offender.**

(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) Any person who commits an offense in violation of this section is guilty of a Class B1 felony. Notwithstanding G.S. 15A-1340.10 or any other provision of law, the

court, in its discretion, shall impose one of the following sentences on a person convicted of an offense under this section:

(1) Life imprisonment without parole; or

(2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(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.

(d) The offense under G.S. 14-27.2(a)(1) is a lesser included offense of the offense in this section."

SECTION 2. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.4A. Sexual offense with a child; adult offender.**

(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

(b) Any person who commits an offense in violation of this section is guilty of a Class B1 felony. Notwithstanding G.S. 15A-1340.10 or any other provision of law, the court, in its discretion, shall impose one of the following sentences on a person convicted of an offense under this section:

(1) Life imprisonment without parole; or

(2) Twenty-five years mandatory active punishment to be followed by satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section."

SECTION 3. G.S. 14-190.16 reads as rewritten:

"**§ 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:

. . .

(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 4. G.S. 14-190.17 reads as rewritten:

"**§ 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:

. . .

(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class E felony."

SECTION 5. G.S. 14-190.17A reads as rewritten:

"**§ 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.

. . .

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class H felony."

SECTION 6. G.S. 14-190.18 reads as rewritten:

"**§ 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.~~Class C felony."

SECTION 7. 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~~ 30-year registration requirement for persons convicted of certain offenses against minors or sexually violent ~~offenses.~~offenses with an opportunity for those persons to petition in superior court to shorten their registration time period after 10 years of registration. 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.

. . . ."

SECTION 8. G.S. 14-208.7 reads as rewritten:

"**§ 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~~ three business 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~~ three business 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 at least ~~10 years~~30 years following the date of initial county ~~registration.~~registration unless the person, after 10 years of

registration, successfully petitions the superior court to shorten his or her registration time period under G.S. 14-208.12A.

. . . ."

SECTION 9. 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~~ the third business 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 intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least ~~10 days~~ three business days before the date the person intends to leave this State to establish residence in another state or jurisdiction. The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

(1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.

(2) The sheriff shall 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 information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within ~~10 days~~three business days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(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, within ~~10 days,~~three business days report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. 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, within ~~10 days,~~three business days 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. The sheriff shall immediately forward this information to the Division."

SECTION 10. 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 semiannually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, and again six months after that 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 in person to the sheriff within ~~10 days~~three business 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) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall 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~~three business days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the 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~~three business days 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 11. G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Request for termination of registration requirement.**

(a) ~~A~~ Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court in the district where the person resides to terminate the 30-year registration requirement ~~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.

. . . ."

SECTION 12. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.18. Sex offender unlawfully on premises.**

(a) It is unlawful for any person convicted of an offense that requires registration under this Article to be on a premise that a reasonable person knows is a place where children regularly congregate without adult supervision.

(b) A violation of this section is a Class H felony."

SECTION 13. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.25A. Community and public notification.**

The licensee for each licensed day care center, and the principal of each elementary school, middle school, and high school shall register with the North Carolina Sex Offender and Public Protection Registry to receive e-mail notification when a registered sex offender moves within a one-mile radius of the licensed day care center or school."

SECTION 14. G.S. 14-208.27 reads as rewritten:

"**§ 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~~the third business 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."

SECTION 15. G.S. 14-208.28(2) reads as rewritten:

"**§ 14-208.28. Verification of registration information.**

. . .

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within ~~10 days~~three business days after the receipt of the form.

. . . ."

SECTION 16. G.S. 14-208.40(a) reads as rewritten:

"(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~~ three 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. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.43.

(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) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(3) Any offender who is convicted of any of the following offenses and sentenced to a term of 25 years active punishment and satellite-based monitoring for the duration of the defendant's natural life pursuant to:

a. G.S. 14-24.2A(Rape of a child by an adult offender).

b. G.S. 14-24.4A(Sexual offense with a child by an adult offender)."

SECTION 16.1. G.S. 14-208.40A, as enacted by S.L. 2007-213, reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, ~~or (iv)~~ (iv) the conviction offense was a violation of G.S. 14-27.2A, or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, ~~or (iv)~~ (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, ~~or~~ has committed an aggravated offense, or was convicted of G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated ~~offense,~~ offense or a violation of G.S. 14-27.2A or 14-27.4A, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 16.2. G.S. 14-208.40B(c), as enacted by Section 3 of S.L. 2007-213, reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, ~~or~~ (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. 14-27.2A or G.S. 14-27.4A, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest

possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 17. G.S. 14-208.41 is amended by adding a new subsection to read:

"(c) Any person described by G.S. 14-208.40(a)(3), upon completion of the 25 years of active punishment 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 enroll in the satellite-based monitoring program for the entire period of post-release supervision and shall remain enrolled in the satellite-based monitoring program for the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.42."

SECTION 18. G.S. 14-208.43(a) reads as rewritten:

"(a) An offender described by G.S. ~~14-308.40(a)(1)~~14-208.40(a)(1) or G.S. 14-208.40(a)(3) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence."

SECTION 19. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail."

SECTION 20. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(b2) Bail Following Arrest for Violation of Post-Release Supervision if Releasee is a Sex Offender. – Notwithstanding subsection (b) of this section, if the releasee has been convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes and is arrested for a violation in accordance with this section, the releasee shall be detained without bond until the preliminary hearing is conducted."

SECTION 21. Part 6 of Article 22 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-332.1. Sex offender registries checks for certain contractual personnel.**

(a) For purposes of this section, the term "contractual personnel" includes any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job.

(b) Each local board of education shall require, as a term of any contract the local board of education enters, that employers of a person who is contractual personnel conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. As a term of any contract, a local board of education shall prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students."

SECTION 22. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The maintenance of the registration period of 30 years required by G.S. 14-208.7, as amended by Section 8 of this act, applies to registrations made on or after December 1, 2008.

HOUSE BILL 933:
Jessica Lunsford Act for NC

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	June 2, 2008
Introduced by:	Reps. Howard, Clary, Moore, Thomas	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H933-CSRK		Committee Co-Counsel

SUMMARY: House Bill 933 (PCS) provides that rape and sexual offense committed against a child by a person 18 years of age or older are punishable by life imprisonment without parole, or a mandatory active sentence of 25 year and lifetime satellite based monitoring. The bill increases the penalties for various offenses involving minors, and makes it unlawful for sex offenders to be on certain premises. The bill also makes changes to the sex offender registration act, satellite monitoring statutes, and probation and post-release supervision laws. The act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

BILL ANALYSIS:

Section 1 creates a new criminal offense that provides that a person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is under the age of 13. This would be a Class B1 felony. In its discretion, the court must impose one of the following on a person convicted of this offense:

- Life imprisonment without parole
- 25 years mandatory active punishment to be followed by satellite based monitoring for life

Section 2 creates a new criminal offense that provides that a person is guilty of first degree sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is under the age of 13. This would be a Class B1 felony. In its discretion, the court must impose one of the following on a person convicted of this offense:

- Life imprisonment without parole
- 25 years mandatory active punishment to be followed by satellite based monitoring for life

Section 3 changes first degree sexual exploitation of a minor from a Class D felony to a Class C felony.

Section 4 changes second degree sexual exploitation of a minor from a Class F felony to a Class E felony.

Section 5 changes third degree sexual exploitation of a minor from a Class I felony to a Class H felony.

Section 6 changes promoting prostitution of a minor from a Class D felony to a Class C felony.

Section 7 amends G.S. 14-208.6A by establishing a 30 year registration requirement for person convicted of certain offense against minors or sexually violent offenses. The current statute prescribes a 10 year registration requirement. However, offenders would have an opportunity to petition for a shorter registration period after 10 years.

Section 8 requires that a person with a reportable offense under the Sex Offender and Public Protection Registration Program who moves to the State from outside of the State must register within 3 business

days of establishing residence. If the person is a current resident of the State, the person must register within 3 business days of release from a penal institution. The current requirement provides a person 10 days to register. The bill would require that the registration be maintained for 30 years rather than the current 10 years but gives offenders the opportunity to petition for a shorter registration period after 10 years.

Section 9 requires that a person who is required to register with the Sex Offender and Public Protection Registration Program must provide notice of a change of address, change in academic status or change in employment status at institution of higher education within 3 business days of the changes.

Section 10 provides that a person return verification of registration information within 3 business days of the receipt of the form and must appear within 3 business days of a request from the sheriff to take another photograph.

Section 11 provides that a person who is required to register under the Sex Offender and Public Protection Registration Program may request to terminate the registration 10 years from the date of initial registration although the registry would be for 30 years.

Section 12 The bill creates a new offense which makes it unlawful for any person convicted of an offense that requires registration in the sex offender registration programs to be on a premise that a reasonable person knows is a place where children regularly congregate without adult supervision.

A violation of this section would be a Class H felony.

Current Law: In *Standley v. Town of Woodfin*, a registered sex offender challenged a town ordinance which prohibited registrants from knowingly entering any public park. The North Carolina Court of Appeals held that the ordinance promoted the general welfare and safety of Woodfin's citizens; thus, the prohibition was within the Town's delegated police power. The court (over a dissent) held that *the right to enter parks* is not encompassed by either a fundamental right to travel, or the fundamental right to intrastate travel. Consequently, instead of applying strict scrutiny, which requires the government to prove that a law in narrowly tailored to achieve a compelling State interest, it applied a lower standard. It found that the ordinance was rationally related to a legitimate governmental purpose. Based upon the split decision, the case is pending before the North Carolina Supreme Court.

The proposed law does present issues that were not applicable in the *Woodfin* case. In *Woodfin*, prior to the ordinance's enactment, there had been two incidents of sexual offenses occurring in or near two of the three public parks. A federal circuit court of appeals had held that the right to enter public parks for "innocent, recreational purposes," is not a fundamental right. The ordinance, by its terms, was not directed solely to protecting children—which allowed a general public safety analysis and negated the registrant's argument that his registration related to an offense that did not involve a minor.

There are several jurisdictions which do have statutory provisions that provide that sex offenders may not be at a place where children regularly congregate (e.g., Florida, Georgia, Utah, Illinois, Oregon and New York). In Oregon, the statute uses an "under 18 years of age" standard, and specifically defines the terms so as to (potentially) avoid a ruling that the statute is unconstitutionally vague, overbroad, or both. The statute narrowly applies "places" where minors congregate as: "schools, child care centers, playgrounds, other places *intended for use primarily by persons under 18 years of age* and places where persons under 18 years of age *gather for regularly scheduled educational and recreational programs.*" (emphasis added)

The federal courts have upheld these state provisions against claims of being vague or overbroad; however, the jurisdictions utilize these provisions as part of the offender's probation, or conditions of release, and generally apply only when the victim of the offense was a minor. Consequently, there is an absence of federal law on whether the application of these types of conditions, applied retroactively, may violate the U.S. Constitution's protections against the ex post facto application of laws, or whether (as applied to all registrants) the provision is narrowly tailored to meet a compelling State interest.

Section 13 creates a new section requiring community and public notification. The licensee of licensed day care centers and principals of elementary, middle, and high schools must register with the North Carolina Sex Offender and Public Protection Registry to receive email notification when a registered sex offender moves within a one mile radius of the day care center or school.

Sections 14 and 15 require juveniles who are adjudicated delinquent and must register for certain offenses to provide change of address notification and verification of information within 3 business days of changes and receipt of verification forms rather than the current 10 days.

Section 16 amends the sex offender monitoring program to include monitoring of 3 categories of offenders. The new third category created is for offenders convicted of the offenses amended in Sections 1 and 2 of the bill: G.S. 14-27.2A and G.S. 14-27.4A.

Sections 16.1 and 16.2 make conforming changes to procedures relating to satellite-based monitoring.

Section 17 makes conforming changes in G.S. 14-208.41 to make enrollment in the satellite-based monitoring program mandatory for life for those guilty of violating G.S. 14-27.2A and G.S. 14-27.4A.

Sections 18 and 19 make conforming changes to satellite-based monitoring and bail statutes.

Section 20 requires the court to make a finding that the probationer is not a danger to the public prior to release with or without bail for arrests for probation violations. This new requirement would apply to probationers convicted of offense that would require registration or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Programs.

Section 21 adds a new subsection that addresses bail following arrest for violation of post-release supervision if the released person is a sex offender. If the releasee is an offender who must register and is arrested for a violation of post-release supervision, the releasee must be detained without bond until the preliminary hearing is conducted.

Section 22 of the bill creates a new section that requires a local school board to require, as a term of any contract that it enters, that the employer of a person who is contractual personnel conduct an annual check of the State and National Sex Offender Registries of that person. The term "contractual personnel" is defined as any individual or entity whose contractual job involves direct interaction with students. The school board must require as a term of the contract that any contractual personnel on a sex offender registry is prohibited from having direct interaction with students.

EFFECTIVE DATE: The bill becomes effective December 1, 2008, and applies to offenses committed on or after that date. The 30 year registration requirement applies to registrations made on or after December 1, 2008.

Summary contribution by Drupti Chauhan, Staff Attorney.

H0933e2-SMRK-CSRK

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. SECOND

H. B. No. 933 DATE 5-3-08

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

COMMITTEE SUBSTITUTE ✓ H933-CSRK-69[v.8]

Rep.) RAND
Sen.)

1 moves to amend the bill on page 10, line 12
2 ( ) WHICH CHANGES THE TITLE
3 by inserting after that line the following:
4
5 "SECTION 21.1. If any provision of this act is or its application
6 held invalid, the invalidity does not affect other
7 provisions or applications of this act that can
8 be given effect without the invalid provisions or
9 applications, and to this end the provisions of
10 this act are severable."
11
12
13
14
15
16
17
18
19

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

H 933 (Jessica Lunsford Act)	S 132 (Sexual Predators Act)
Provisions that are identical to S 132 • Changes 14-190.16 (1st degree sexual exploitation) from D to C felony • Changes 14-190.17 (2nd degree sexual exploitation) from F to D felony • Changes 14-190.17A (3rd degree sexual exploitation) from I to E felony	Provisions that are identical to H 933 • Changes 14-190.16 (1st degree sexual exploitation) from D to C felony • Changes 14-190.17 (2nd degree sexual exploitation) from F to D felony • Changes 14-190.17A (3rd degree sexual exploitation) from I to E felony
Remaining Provisions • Amends 14-27.2 (1st degree rape) to create B1 felony and GPS monitoring • Amends 14-27.4 (1st degree sexual offense) to create B1 felony and GPS monitoring • Changes 14-190.18 (promoting prostitution of a minor) from D to C felony • Creates 14-202.5 (lewd or lascivious molestation of a child) • Changes 14-208.6A (lifetime registration requirements for sex offenders) from 10 years to 30 years • Amends 14-208.7; 14-208.9; 14-208.9A; 14-208.27; 14-208.28 to change various sex offender registration and notification requirements from 10 days to 48 hours • Creates 14-208.18 (unlawful for sex offender to be on certain premises where children are or regularly congregate • Creates 14-208.25A (community and public notification requirements by law enforcement agencies) • Amends 15A-1345 and 15A-1368 (bail following arrest for probation and post-release supervision violations) • Creates 115C-332A (background screening for contractual personnel employed by school boards)	Remaining Provisions • Amends 14-190.13 to include lascivious exhibition of the genitals or pubic area in definition of sexual activity • Creates 66-67.4 (requires computer technicians and photo processors to report images that have minors engaged in sexual activity) • Changes part of 14-202.3 (Solicitation of child by computer to commit unlawful sex act) from H to E felony • Amends 14-225 to create H felony for lying to sworn SBI agent for official inquiry • Creates 75-40 (require parental permission for minors to access commercial social networking websites) • Creates 14-202.5 (prohibits sex offenders to access social networking websites used by minors to create web pages) • Creates 14-202.6 (prohibits sex offenders from changing their names)

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, June 3, 2008
10 a.m.
Room 1027

1 Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 1805	No Auto. Revoke/Driv. Lic./Incompetent Person.	Senator Malone
SB 2080	UNC Campus Safety/Funds.	Senator Rand
HB 933	Jessica Lunsford Act for NC.	Representative Thomas Representative Clary Representative Howard Representative Moore
HB 517	Fleeing Accident Scene/Increase.	Representative Moore

Adjournment.

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Jami Fitzgerald	NCFPC
Andy Willis	UNC-GA
Dale Folwell	NC State
Tom Keane	NC State
Laura Logsdon	UNC-GA
Butch Gunnells	NC Ben. Assoc.
GEORGE SUDDATH	PBR
JB Powell	AOC
Misty Greene	Intern - Rep Moore
Nancy Davis	LA - Rep Moore
Keith G. Woodward	AP

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Steve Metcalf	The Poly Group
Jim Williams	TPG
Jeff Mixon	Civitas

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
John Hoomani	NCDA
Michelle Weaver	Citizen - WCRWC
	NC citizen
	NMSS
Chris Burton	" "
	Electricities
Cameron Hanby	Electricities of NC
Shanah Black	NCCASA
Sarah Becker	NCCASA
	observer

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Troy D. Page	AOC
Scott Gardner	Duke Energy
Harry Tharrington	N.C. Bar Assoc

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

June 3, 2008
After Session

MINUTES

The Senate Judiciary I (Civil) Committee met Tuesday, June 3, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 4:09 p.m.

In attendance were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator David Hoyle, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw and Hal Pell. Committee assistant Jessica Kozma Bennett and research assistant Denise Huntley were also present.

Senate Bill 2063
The Jessica Lumsford Act of North Carolina

Continuing discussion from an earlier meeting that morning, Chairman Nesbitt called on Mr. Pell to explain changes to the bill that occurred between the morning and this afternoon meeting. Mr. Pell explained an amendment to the bill allowing for the distinction between businesses open to the public versus schools. The registrant, he said, would not be allowed on sites catering specifically to youth. Chairman Nesbitt then called for discussion.

Senator Hoyle moved for adoption of the amendment. With limited discussion, the amendment was adopted through unanimous vote. Discussion continued.

Chairman Nesbitt asked Mr. Pell about contractors, such as plumbers and those working in delivery jobs, noting that the current bill did not make a provision for such workers. Senator Tillman said he wanted to clarify that an employee had to disclose to his employer when called to "go dig a ditch." Mr. Pell said that the worker would have to be under supervision if working at a place where children congregate. Senator Tillman questioned the provision, saying that an employee mowing a yard cannot have someone running behind them. He added that he felt that the bill was weakening current statutory authority regarding sexual offenders and their restrictions on school property.

A proposed committee substitute, distributed to members, was adopted for discussion by a motion by Senator Boseman, seconded by Senator Hoyle.

Senator Brock said that he wanted to ensure that store where children congregate was included in the bill. Mr. Pell said that the bill is drafted with an eye towards a constitutionality issue of forbidding a person anywhere.

Chairman Nesbitt then called on comments from the audience.

Sarah Preston of the American Civil Liberties Union thanked Chairman Nesbitt and explained that her organization had problems with the new drafting, adding that it would be confusing for people to understand where they can and cannot go. She also noted a question about due process, that it may be confusing for lawyers representing offenders.

Leanne Winner with the North Carolina School Boards Association was then recognized by Chairman Nesbitt, who noted that students enrolled in State schools may be listed on the sex offender registry, and that there needed to be an exemption given the constitutional mandate that all of the State's children are entitled to receive a public education.

Senator Hoyle asked how this issue was handled in the Florida legislation, Mr. Pell answered that he was unsure whether there is a provision in Florida. Senator Hoyle then asked Ms. Winner if she had pooled school boards for their opinion. Ms. Winner replied that in the House legislation there was not an issue, and that her organization had not had an opportunity to pool school boards. Senator Kinnaird asked if there is a provision for so-called "Romeo and Juliet" cases, of which Mr. Pell answered there are offenses that involve minors. Chairman Nesbitt commented that the issues had gotten harder, saying if you are going to tell someone they cannot go anywhere, you need to have a good reason to do so. ***The bill was then displaced until amendments could be drawn.***

House Bill 517

Chairman Nesbitt recognized Representative Moore to discuss House Bill 517, a bill increasing penalty from a Class H felony to a Class G felony for leaving the scene of an accident in which any person suffers serious bodily injury.

A proposed committee substitute was distributed to member and adopted for discussion through a motion by Senator Tillman. Senator Brown then moved for favorable report, the bill received favorable report with a re-referral to the Appropriations Committee by unanimous vote.

Senate Bill 2080

A proposed committee substitute distributed to membership and motioned for adoption by Chairman Nesbitt and adopted through unanimous vote. The bill had three provisions for University of North Carolina Campus safety funds: 1) appropriate $11,700,000 in recurring funds and $17,500,000 in non0recurring funds for the 2008-2009 fiscal year; 2) direct the Board of Governor's of the University of North Carolina to study the issue fo providing qualified immunity to mental health and health care professionals for disclosure of confidential information for the purpose of preventing

hard to harm to others, and; 3) create a new felony for communicating a threat of mass violence on educational property. Ms. McGraw said that the PCS was technical in nature.

Senator Stevens moved for favorable report of the PCS, unfavorable as to original bill with a re-referral to appropriations. Motion passes unanimously.

Senate Bill 2063
The Jessica Lumsford Act of North Carolina

Chairman Nesbitt returned to Senator Bill 2063. Mr. Pell read a newly drafted amendment and asked Representative Moore if he was comfortable with the amendment. Chairman Nesbitt then asked Ms. Winner if she was willing to work with the legislation between now and when it is heard in appropriations, of which she was willing. ***A motion to give favorable report to a new PCS, including all added amendments passed through unanimous vote.***

The meeting was adjourned at 5:42 p.m.

Respectfully submitted,

Senator Martin L. Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

SENATE BILL 2063:
Jessica's Law/GPS Monitoring

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Finance	**Date:**	June 23, 2008
Introduced by:	Sen. Hoyle	**Summary by:**	Hal Pell
Version:	First Edition PCS		Committee Co-Counsel

SUMMARY: ***This act imposes lifetime satellite-based monitoring on adults who molest children under 13 years of age, creates a new offense of tampering with a device, makes technical corrections to the satellite-based monitoring statutes, and increases the fee for persons required to enroll in the monitoring program. The bill also directs the Department of Justice to study federal guidelines for compliance with the Sex Offender Registration and Notification Act (SORNA), and to report and make recommendations by December 1, 2008.***

BILL ANALYSIS:

Section 1: Amends the Indecent Liberties statute to require the District Attorney to present evidence that the perpetrator was over 18, the victim was under 13, and that acts constitution sexual molestation occurred. The court's findings would be included in the record of the case.

Section 2: Amends the statute setting forth the purpose of the sex offender registry statutes to include the satellite-based monitoring program. Generally, provisions deemed to be related to the purposes of the criminal law that have retroactive application are unconstitutional. Courts have upheld programs that are "civil" in nature, and designed to provide information to authorities that is related to public safety and information.

Section 3: Makes conforming changes to include the sexual molestation of a child as an "aggravated" offense (lifetime monitoring).

Section 4: Clarifies that the satellite-based monitoring program is retroactive, and applies to the category of offenders set forth in S.L. 2006-247. Makes technical changes to statutory language.

Section 5: Makes a technical correction to provide that a reportable offense "involving a minor" requires a risk assessment. A reportable conviction is either an "offense against a minor" (kidnapping, abduction of children, restraint) or a "sexually violent offense." The amendment allows for a conditional risk assessment and judicial determination on whether monitoring is necessary on a factual showing that the offense involved a minor. Also clarifies that (i) the district attorney represents the Department of Correction and schedules hearings, (ii) the court is to make findings if a determination is made that the offender does not fit into a designated category, and (iii) the court's finding for enrollment is based upon the risk assessment.

Section 6: Makes technical corrections to reflect retroactivity. Clarifies that the district attorney, representing the Department of Correction, schedules hearings in the superior court.

Section 7: Increases the one-time enrollment fee for the program from $90 to $95.

Section 8: Makes it a Class A1 misdemeanor for a person to remove, tamper, or interfere with any device placed on the person by the courts, or Department of Correction. Currently, it is a Class E felony to tamper, interfere with, or remove a device issued pursuant to the satellite-based monitoring

program in the sex offender statutes. There is no criminal offense for damaging or interfering with electronic monitoring devices used in other situations (e.g., house arrest).

Section 9: Provides that the Department of Justice study the guidelines issued by the U.S. Attorney for compliance with the Sex Offender Registration and Notification Act (SORNA). The bill requires that the Attorney General report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee regarding the State's compliance, and any recommended legislation, no later than December 1, 2008.

Section 10: Prosecutions already begun prior to the effective dates are not abated.

Section 11: Severability clause; any provision held invalid does not result in others being invalid.

Section 12: The sentencing proceedings in Section 1 apply to sentencing hearings commencing on or after December 1, 2008; however, persons convicted and sentenced prior to that date are subject to hearings under G.S. 14-208.40B. The tampering offense is effective for offenses occurring on or after December 1, 2008, and the remaining provisions are applicable when they become law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S **2**

SENATE BILL 2063

Judiciary I (Civil) Committee Substitute Adopted 6/24/08

Short Title: Jessica's Law/GPS Monitoring. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO MODEL NORTH CAROLINA'S SATELLITE-BASED MONITORING LAWS AFTER THE STATE OF FLORIDA'S "JESSICA'S LAW" IMPOSING LIFETIME SATELLITE-BASED MONITORING ON OFFENDERS WHO HAVE TAKEN INDECENT LIBERTIES WITH CHILDREN, TO MAKE IT UNLAWFUL TO TAMPER WITH A DEVICE, TO CLARIFY THE PURPOSE AND APPLICATION OF THE SATELLITE-BASED MONITORING LAWS FOR SEX OFFENDERS, TO AMEND THE FEE CHARGED FOR ENROLLMENT INTO THE MONITORING PROGRAM, AND TO DIRECT THE STATE DEPARTMENT OF JUSTICE TO REPORT ON ANY NECESSARY CHANGES TO THE STATE SEX OFFENDER REGISTRATION LAWS FOR COMPLIANCE WITH THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT.

Whereas, nine-year-old Jessica Lunsford was assaulted and murdered by a convicted sex offender in Florida; and

Whereas, the State of Florida enacted legislation designed to monitor and track persons convicted of indecent liberties against minors; and

Whereas, the State of Florida included in its legislation a provision that when persons convicted of molesting children are released from active confinement, they will be monitored and tracked to help ensure the safety of the public; and

Whereas, the monitoring included the use of the latest technology available, designed to use satellites to verify the location of persons convicted of serious and violent sex offenses; and

Whereas, this State should also utilize the latest technology in monitoring persons who have been convicted in this State of serious and violent sexual assaults against minors or who have moved into this State after committing these types of offenses against minors in other states; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.1 reads as rewritten:

"§ 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.

(c) When an offender is convicted of an offense under this section, during the sentencing phase, the district attorney shall present to the court any evidence that the defendant is 18 years of age or older and that the defendant, during the offense,

(1) Intentionally touched, in a lewd or lascivious manner, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of the victim, a person less than 13 years of age at the time of the offense, or

(2) Forced or enticed the victim, a person under 13 years of age, to so touch the perpetrator in the manner and places described in subdivision (1) of this subsection.

The court, after hearing any evidence presented by the parties, shall make findings on whether the circumstances described in subdivision (1) or (2) of this subsection occurred in the case.

(d) If the court makes findings under subsection (c) of this section, then the judge shall indicate on the form reflecting the judgment that the offense qualifies as a G.S. 14-202.1(c) offense. The clerk of court shall ensure that the official record of the defendant's conviction includes the court's determination so that any inquiry into the defendant's criminal record will reflect that the offense involved an act or acts described in subsection (c) of this section by an adult against a child under 13 years of age."

SECTION 2. G.S. 14-208.5 reads as rewritten:

"§ 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.

The enactment of the sex offender monitoring program in Part 5 of this Article is designed to utilize the latest technological solutions to monitor and track serious and violent sex offenders. The use of a continuous satellite-based monitoring system will provide this State with a more

efficient and accurate method of monitoring these serious and predatory criminals. United States Department of Justice statistics reveal that, compared to non-sex offenders released from State prisons, released sex offenders were four times more likely to be rearrested for a sex crime. Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community.

Technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders once they have completed active sentences. These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly updated geographic location of supervised serious offenders and violent sexual offenders following their release, with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations. Continuous 24 hours a day, seven days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are required by law to register as sex offenders. The satellite-based monitoring program is civil and not punitive in nature, and is primarily designed as a means of assuring, as much as possible, public protection.

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. It is also the purpose of this Article to ensure, through the use of available technology, that there is improved supervision and behavioral control of offenders who have been convicted of serious and violent offenses."

SECTION 3. G.S. 14-208.6(1a) reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "Aggravated offense" means

a. ~~any~~ Any criminal offense that includes either of the following: 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.~~13 years old.

b. A conviction under G.S. 14-202.1, where a court finds, under either G.S. 14-208.40A or G.S. 14-208.40B, that the factual circumstances of the offense meet the requirements under G.S. 14-202.1(c)(1) or (c)(2)."

SECTION 4. G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. Establishment of program; creation of guidelines; ~~duties.~~duties; application.**

(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~~ has been 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~~ has been 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) based on the Department's risk assessment program requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program.

(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.

(e) Application. – Notwithstanding any other provision of law, the satellite-based monitoring program and requirements, as provided in this section, and throughout this Part of Article 27A of the General Statutes, are retroactive and apply to the following persons, regardless of the date of their offense or conviction:

(1) Any person sentenced to intermediate punishment on or after August 16, 2006.

(2) Any person released from prison by parole or post-release supervision on or after August 16, 2006.

(3) Any person who completed his or her sentence on or after August 16, 2006, who is not on post-release supervision or parole."

SECTION 5. G.S. 14-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that

(i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved ~~the physical, mental, or sexual abuse of~~ a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a) or not, and ~~if so,~~ shall make a finding of fact of that ~~determination,~~ determination. The court shall specify ~~specifying~~ whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved ~~the physical, mental, or sexual abuse of~~ a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, or has committed an aggravated offense, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved ~~the physical, mental, or sexual abuse of~~ a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program. If so, ~~the court determines that the offender does require the highest possible level of supervision and monitoring,~~ the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 6. G.S. 14-208.40B reads as rewritten:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender ~~is convicted of~~ has a conviction for an offense that is a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, because the court did not make an enrollment determination at the time of sentencing as provided by law, or the sentencing occurred prior to the effective date of any law providing for an enrollment determination at time of sentencing, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Department, ~~Department~~ shall schedule a hearing in ~~the~~ superior court ~~of~~ for the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S.

14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, or (iii) the conviction offense was an aggravated offense, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved ~~the physical, mental, or sexual abuse of~~ a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program. If so, the court ~~determines that the offender does require the highest possible level of supervision and monitoring, the court~~ shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court. (2007-213, s. 3; 2007-484, s. 42(b))."

SECTION 7. G.S. 14-208.45 reads as rewritten:

"**§ 14-208.45. Fees.**

(a) Except as provided in subsections (b) and (b1) of this section, each person required to enroll pursuant to this Part shall pay a one-time fee of ~~ninety dollars ($90.00).~~ ninety-five dollars ($95.00). The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction. 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) When a court determines a person is required to enroll pursuant to G.S. 14-208.40A or G.S. 14-208.40B, the court may exempt a person from paying the fee required by subsection (a) of this section only for good cause and upon motion of the person required to enroll in 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.

(c) When a person is required to enroll based on a determination by the Department pursuant to G.S. 14-208.40B, the Department shall have the authority to exempt the person from paying the fee only for good cause and upon request of the person required to enroll in satellite-based monitoring. The Department 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."

SECTION 8. Article 30 of Chapter 14 of the General Statutes is amended by adding

a new section to read:

"**§ 14-221.3. Removing, tampering, or interfering with device; penalty.**

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who knowingly and without lawful authority removes, tampers with, or interferes with the operation of any device that (i) had been ordered by a court to be placed upon the person as a result of a criminal trial, proceeding, or other hearing, or (ii) had been placed upon the person as a condition of probation, parole, or by court-delegated authority, shall be guilty of a Class A1 misdemeanor."

SECTION 9. The Department of Justice shall study the guidelines issued by the U.S. Attorney for the federal Sex Offender Registration and Notification Act (SORNA) to determine whether North Carolina is in compliance with those guidelines. The Department of Justice shall identify any areas in which the State fails to comply with SORNA and the action required for compliance. The Attorney General, or his designee, shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, regarding the status of the State's compliance with SORNA and recommend any actions or State legislation that may be required to satisfy the SORNA guidelines.

SECTION 10. 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.

SECTION 11. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 12. The new provisions set forth in Section 1, G.S. 14-202.1(c), and G.S. 14-202.1(d) are effective for sentencing hearings commencing on or after December 1, 2008. On or after December 1, 2008, pursuant to G.S. 14-208.40B and the retroactivity provisions in Section 4 of this act, persons who were sentenced for violating G.S. 14-202.1 prior to December 1, 2008, are subject to a hearing to determine if the offense qualifies as an aggravated offense. Section 8 of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

PROPOSED COMMITTEE SUBSTITUTE S2063-PCS85474-RKf-74

A BILL TO BE ENTITLED

AN ACT TO MODEL NORTH CAROLINA'S SATELLITE-BASED MONITORING LAWS AFTER THE STATE OF FLORIDA'S "JESSICA'S LAW" IMPOSING LIFETIME SATELLITE-BASED MONITORING ON OFFENDERS WHO HAVE TAKEN INDECENT LIBERTIES WITH CHILDREN, TO MAKE IT UNLAWFUL TO TAMPER WITH A DEVICE, TO CLARIFY THE PURPOSE AND APPLICATION OF THE SATELLITE-BASED MONITORING LAWS FOR SEX OFFENDERS, TO AMEND THE FEE CHARGED FOR ENROLLMENT INTO THE MONITORING PROGRAM, AND TO DIRECT THE STATE DEPARTMENT OF JUSTICE TO REPORT ON ANY NECESSARY CHANGES TO THE STATE SEX OFFENDER REGISTRATION LAWS FOR COMPLIANCE WITH THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT.

Whereas, nine-year-old Jessica Lunsford was assaulted and murdered by a convicted sex offender in Florida; and

Whereas, the State of Florida enacted legislation designed to monitor and track persons convicted of indecent liberties against minors; and

Whereas, the State of Florida included in its legislation a provision that when persons convicted of molesting children are released from active confinement, they will be monitored and tracked to help ensure the safety of the public; and

Whereas, the monitoring included the use of the latest technology available, designed to use satellites to verify the location of persons convicted of serious and violent sex offenses; and

Whereas, this State should also utilize the latest technology in monitoring persons who have been convicted in this State of serious and violent sexual assaults against minors or who have moved into this State after committing these types of offenses against minors in other states; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.1 reads as rewritten:

"**§ 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.

(c) When an offender is convicted of an offense under this section, during the sentencing phase, the district attorney shall present to the court any evidence that the defendant is 18 years of age or older and that the defendant, during the offense,

(1) Intentionally touched, in a lewd or lascivious manner, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of the victim, a person less than 13 years of age at the time of the offense, or

(2) Forced or enticed the victim, a person under 13 years of age, to so touch the perpetrator in the manner and places described in subdivision (1) of this subsection.

The district attorney shall have no discretion to withhold any evidence required to be presented to the court pursuant to this subsection. The court, after hearing any evidence presented by the parties, shall make findings on whether the circumstances described in subdivision (1) or (2) of this subsection occurred in the case.

(d) If the court makes findings under subsection (c) of this section, then the judge shall indicate on the form reflecting the judgment that the offense qualifies as a G.S. 14-202.1(c) offense. The clerk of court shall ensure that the official record of the defendant's conviction includes the court's determination so that any inquiry into the defendant's criminal record will reflect that the offense involved an act or acts described in subsection (c) of this section by an adult against a child under 13 years of age."

SECTION 2. G.S. 14-208.5 reads as rewritten:

"**§ 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.

The enactment of the sex offender monitoring program in Part 5 of this Article is designed to utilize the latest technological solutions to monitor and track serious and violent sex offenders. The use of a continuous satellite-based monitoring system will provide this State with a more efficient and accurate method of monitoring these serious and predatory criminals. United States Department of Justice statistics reveal that, compared to non-sex offenders released from State prisons, released sex offenders were four times more likely to be rearrested for a sex crime. Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community.

Technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders once they have completed active sentences. These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly updated geographic location of supervised serious offenders and violent sexual offenders following their release, with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations. Continuous 24 hours a day, seven days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are required by law to register as sex offenders. The satellite-based monitoring program is civil and not punitive in nature, and is primarily designed as a means of assuring, as much as possible, public protection.

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. It is also the purpose of this Article to ensure, through the use of available technology, that there is improved supervision and behavioral control of offenders who have been convicted of serious and violent offenses."

SECTION 3. G.S. 14-208.6(1a) reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "Aggravated offense" means

a. ~~any~~ Any criminal offense that includes either of the following: 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.~~13 years old.

b. A conviction under G.S. 14-202.1, where a court finds, under either G.S. 14-208.40A or G.S. 14-208.40B, that the factual circumstances of the offense meet the requirements under G.S. 14-202.1(c)(1) or (c)(2)."

SECTION 4. G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. Establishment of program; creation of guidelines; ~~duties.~~duties; application.**

(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~~ has been 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~~ has been 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) based on the Department's risk assessment program requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program.

(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.

(e) Application. – Notwithstanding any other provision of law, the satellite-based monitoring program and requirements, as provided in this section, and throughout this Part of Article 27A of the General Statutes, are retroactive and apply to the following persons, regardless of the date of their offense or conviction:

(1) Any person sentenced to intermediate punishment on or after August 16, 2006.

(2) Any person released from prison by parole or post-release supervision on or after August 16, 2006.

(3) Any person who completed his or her sentence on or after August 16, 2006, who is not on post-release supervision or parole."

SECTION 5. G.S. 14-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved ~~the physical, mental, or sexual abuse of~~ a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection. The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a) or not, and ~~if so,~~ shall make a finding of fact of that ~~determination,~~ determination. The court shall specify ~~specifying~~ whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved ~~the physical, mental, or sexual abuse of~~ a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, or has committed an aggravated offense, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved ~~the physical, mental, or sexual abuse of~~ a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program. If so, ~~the court determines that the offender does require the highest possible level of supervision and monitoring,~~ the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 6. G.S. 14-208.40B reads as rewritten:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender ~~is convicted of~~ has a conviction for an offense that is a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, because the court did not make an enrollment determination at the time of sentencing as provided by law, or the sentencing occurred prior to the effective date of any law providing for an enrollment determination at time of sentencing, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Department, ~~Department~~ shall schedule a hearing in ~~the~~ superior court ~~of~~ for the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, or (iii) the conviction offense was an aggravated offense, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved ~~the physical, mental, or sexual abuse of~~ a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program. If so, the court ~~determines that the offender does require the highest possible level of supervision and monitoring, the court~~ shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court. (2007-213, s. 3; 2007-484, s. 42(b))."

SECTION 7. G.S. 14-208.45 reads as rewritten:

"**§ 14-208.45. Fees.**

(a) Except as provided in subsections (b) and (b1) of this section, each person required to enroll pursuant to this Part shall pay a one-time fee of ~~ninety dollars~~

~~($90.00).~~ ninety-five dollars ($95.00). The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction. 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) When a court determines a person is required to enroll pursuant to G.S. 14-208.40A or G.S. 14-208.40B, the court may exempt a person from paying the fee required by subsection (a) of this section only for good cause and upon motion of the person required to enroll in 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.

(c) When a person is required to enroll based on a determination by the Department pursuant to G.S. 14-208.40B, the Department shall have the authority to exempt the person from paying the fee only for good cause and upon request of the person required to enroll in satellite-based monitoring. The Department 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."

SECTION 8. Article 30 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-221.3. Removing, tampering, or interfering with device; penalty.**

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who knowingly and without lawful authority removes, tampers with, or interferes with the operation of any device that (i) had been ordered by a court to be placed upon the person as a result of a criminal trial, proceeding, or other hearing, or (ii) had been placed upon the person as a condition of probation, parole, or by court-delegated authority, shall be guilty of a Class A1 misdemeanor."

SECTION 9. The Department of Justice shall study the guidelines issued by the U.S. Attorney for the federal Sex Offender Registration and Notification Act (SORNA) to determine whether North Carolina is in compliance with those guidelines. The Department of Justice shall identify any areas in which the State fails to comply with SORNA and the action required for compliance. The Attorney General, or his designee, shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, regarding the status of the State's compliance with SORNA and recommend any actions or State legislation that may be required to satisfy the SORNA guidelines.

SECTION 10. 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.

SECTION 11. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 12. The new provisions set forth in Section 1, G.S. 14-202.1(c), and G.S. 14-202.1(d) are effective for sentencing hearings commencing on or after December 1, 2008. On or after December 1, 2008, pursuant to G.S. 14-208.40B and the

retroactivity provisions in Section 4 of this act, persons who were sentenced for violating G.S. 14-202.1 prior to December 1, 2008, are subject to a hearing to determine if the offense qualifies as an aggravated offense. Section 8 of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 517

Committee Substitute Favorable 6/18/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H517-CSRR-49 [v.1]

5/30/2008 6:01:56 PM

Short Title: Fleeing Accident Scene/Increase Penalty. (Public)

Sponsors:

Referred to:

March 7, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR LEAVING THE SCENE OF AN ACCIDENT WHERE A VICTIM HAS SUFFERED SERIOUS BODILY INJURY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-166(a) reads as rewritten:

"(a) The driver of any vehicle who knows or reasonably should know:

(1) That the vehicle which he or she is operating is involved in an accident or collision; and

(2) That the accident or collision has resulted in injury or death to any person;

shall immediately stop his or her vehicle at the scene of the accident or collision. The driver shall remain with the vehicle at the scene of the accident until a law-enforcement officer completes the investigation of the accident or collision or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the accident by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as (i) a Class H ~~felony.~~felony, or (ii) a Class G felony if any person suffers death or serious bodily injury. For the purposes of this subsection, "serious bodily injury" is defined as set forth in G.S. 14-32.4(a)."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 517

Committee Substitute Favorable 6/18/07

Short Title: Fleeing Accident Scene/Increase Penalty. (Public)

Sponsors:

Referred to:

March 7, 2007

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shall immediately stop his or her vehicle at the scene of the accident or collision. The driver shall remain with the vehicle at the scene of the accident until a law-enforcement officer completes the investigation of the accident or collision or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the accident by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as (i) a Class H ~~felony.~~felony, or (ii) a Class G felony if any person suffers death or serious bodily injury. For the purposes of this subsection, "serious bodily injury" is defined as set forth in G.S. 14-32.4(a)."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H **3**

HOUSE BILL 517
Committee Substitute Favorable 6/18/07
Senate Judiciary I (Civil) Committee Substitute Adopted 6/4/08

Short Title: Fleeing Accident Scene/Increase Penalty. (Public)

Sponsors:

Referred to:

March 7, 2007

A BILL TO BE ENTITLED

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shall immediately stop his or her vehicle at the scene of the accident or collision. The driver shall remain with the vehicle at the scene of the accident until a law-enforcement officer completes the investigation of the accident or collision or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the accident by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as (i) a Class H ~~felony.~~felony, or (ii) a Class G felony if any person suffers death or serious bodily injury. For the purposes of this subsection, "serious bodily injury" is defined as set forth in G.S. 14-32.4(a)."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 517 (Second Edition)

SHORT TITLE: Fleeing Accident Scene/Increase Penalty.

SPONSOR(S): Representative Moore

FISCAL IMPACT

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

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
GENERAL FUND					
Correction: Prisons	**Assumes minimum prison capital and operating costs if 15% of current # o f Class H convictions increased to Class G. See Assumptions and Methodology.**				
Recurring*	-	$ 56,500	$ 87,293	$ 92,609	$ 95,388
Capital*	$ 204,120	-	-	-	-
Assumes prison bed construction within a stand-alone facility (p. 3-4). Additional prison population (bed) Impact, capital and operating costs cannot be projected beyond the two year window (pp. 2-3).					
Correction: DCC	**Amount cannot be determined.**				
Judicial	**Assumes 15% of prior year charges. See Assumptions and Methodology.**				
Recurring	$ 27,090	$ 48,764	$ 51,202	$ 53,762	$ 56,450
Nonrecurring	-	-	-	-	-
TOTAL EXPENDITURES:	**Exact amount cannot be determined. Based on 15% scenario, total costs could approach $231,210 for FY 2007-08; $105,264 for FY 08-09; and $138,495 for FY 09-10. Actual costs could vary from this scenario example.**				
ADDITIONAL PRISON BEDS: (cumulative)*	-	2	3	3	3
POSITIONS: (cumulative)					
Correction: Prisons	-	-	1	1	1

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

EFFECTIVE DATE: December 1, 2007.

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: G.S. 20-166(a) currently prohibits the driver of a vehicle, who knows or reasonably should know that his or her vehicle has been involved in an accident and that the accident has resulted in injury or death to any person, from willfully leaving the scene before a law enforcement officer so authorizes, or before an investigation is completed. The driver is also prohibited from removing or facilitating/attempting to remove the involved vehicle from the scene, prior to completion of the investigation. A driver is permitted to temporarily leave the scene to secure emergency assistance and/or to promote his personal and others' safety; however, he must return the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by law enforcement. Willful violation of G.S. 20-166(a) is a Class H felony offense.

* The second edition of H.B. 517 amends G.S. 20-166(a) to create the enhanced offense of fleeing/failing to remain at the scene of an accident if any person involved suffers death or "serious bodily injury," as defined by G.S. 14-32.4(a). Willful violation is a Class G felony offense (was Class F felony in first edition). The bill becomes effective December 1, 2007, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

Offense data for G.S. 20-166(a) does not distinguish the number of offenses involving "serious bodily injury" (G.S. 14-32.4(a)); therefore, there is no reliable basis upon which to project the number of future charges and/or convictions for the enhanced offense. However, because affected charges and/or convictions would only be enhanced by one offense class (Class H to Class G), *Fiscal Research does not assume this legislation will generate a significant fiscal impact.*

The assumptions outlined in the following paragraphs identify the *potential* costs of the proposal for the state's justice system. As shown, the total cost of implementation *by FY 2008-09* is an estimated $336,474 (Fiscal Impact Table, p.1).

Department of Correction – Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* [1]Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

While it is not known how many convictions for the enhanced offense might occur, any additional conviction and resultant active sentence will increase the demand for prison beds. This increased demand will be driven largely by a higher active sentencing rate and longer sentence length for Class G felony convictions, relative to Class H. In FY 2005-06, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 11 months; *conversely, 42% of Class G felony convictions resulted in active sentences, with an average estimated time served of 16 months.*

Though a projection of future convictions for the enhanced offense is unavailable, prior year conviction data provides some indication of potential impact. In FY 2005-06, there were 87 Class H felony convictions for violation G.S. 20-166(a). From this conviction total, the Sentencing and Policy

[1] The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Advisory Commission was asked to estimate potential prison bed needs based on several scenarios (Table 1).[2] Each scenario assumes that a certain percentage of the 87 Class H felony convictions would become Class G felony convictions under this proposal. These estimates demonstrate only two-year impact, and assume FY 2005-06 sentencing and revocation patterns for Classes G and H felonies. Actual convictions, active sentencing rates, and revocation rates could exceed or fall short of these assumptions.

➢ *An annual inflation rate of 3% is applied to FY 2009-10 prison bed operating costs beyond the initial two-year window.* ***These construction and operating costs (15% scenario) are depicted in the Fiscal Impact Table (p. 1).*** *However, it is not known exactly how bed demand and construction/operating costs might be distributed over the five-year note horizon.*

Table 1. Projected Convictions and Prison Bed Impact			
Projected Convictions		*Prison Beds Required*	
Scenarios	Convictions	FY 08/09	FY 09/10
10%	*9*	1	2
15%	*13*	2	3
20%	*18*	2	4

As shown, if 15% (13) of the 87 Class H felony convictions were to become Class G convictions under this proposal, two additional prison beds would be required by the first applicable year; three additional beds by the second; and one additional position by the second year.[3] Assuming inmate assignment to medium custody, the construction of three prison beds within a new, stand alone facility could cost the State $204,120 in FY 2007-08; bed construction within an add-on facility could cost approximately $126,360.[4] These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total $56,500 in FY 2008-09, and $87,293 in FY 2009-10.[5]

Table 2. Estimated Prison Bed Construction and Operation Costs				
Prison Bed Construction Alternatives & Costs			*Operating Costs*	
Scenarios	Stand Alone: FY 07/08	Add-On: FY 07/08	FY 08/09	FY 09/10
10%	$ 136,080	$ 84,240	$ 28,250	$ 58,195
15%	$ 204,120	$ 126,360	$ 56,500	$ 87,293
20%	$ 272,160	$ 168,480	$ 56,500	$ 113,000

[2] ***Because the proposed offense criteria are new, a more detailed impact projection could not reliably be computed using the Structured Sentencing Simulation Model. Threshold scenarios only represent potential two-year impact.***

[3] Position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

[4] New, "stand alone" institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

"Add-on" facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody "add-on" is built adjacent to an existing perimeter. "Add-on" facilities employ the same EOC custody configurations as "stand alone" (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

[5] Impact on incarcerated population is assumed for FY 2008/09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

Department of Correction – Division of Community Corrections

Per structured sentencing, Classes G and H felony offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). For Class H felons, community sentencing is authorized only for those without a prior record, whereas intermediate punishment is authorized up to prior record level V. In contrast, only intermediate punishment is authorized (prior record levels I-III) for non-active, Class G felony sentences. Accordingly, resultant non-active sentences for the enhanced offense could potentially increase the demand for DCC intermediate sanction resources; however, given the higher rate of active sentencing for Class G felony convictions, no significant impact is assumed.[6]

In FY 2005-06, 58% of Class G felony convictions resulted in intermediate punishments, predominantly intensive supervision and special probation; 66% of Class H felony convictions resulted in non-active, intermediate or community sentences. It is not known how many additional or fewer offenders would be sentenced to intermediate or community punishments under this proposal, nor is it known to which type, or for how long. Thus, the potential fiscal impact for DCC is indeterminate.

Judicial Branch

Though it is not known how many charges might occur for the enhanced offense, the Administrative Office of the Courts expects that any penalty enhancement would be accompanied by more vigorous defense and prosecution, and would thereby increase court-time requirements and the associated costs of case disposal. Specifically, the AOC anticipates that more cases would be prosecuted, resulting in increased jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel.

Data for calendar year 2006 indicates that approximately 675 defendants were charged under G.S. 20-166(a). Assuming that 15% (approx. 100) of these 675 prior year cases occur annually for the enhanced offense, it is estimated that the difference in court-time, jury, and indigent defense costs for case disposal would be approximately $46,442 per year. As shown, it is assumed that a higher percentage of Class G felony cases would result in trial (5%) and guilty plea (54%), relative to Class H felony cases – 0.9% trial and 49% plea. Actual costs may vary from this example, contingent upon court-time and workload requirements, as well as the type of case disposition.

➢ *Fiscal research has revised AOC cost estimates to reflect the 15% percent illustration used for prison bed impact, as well as the proposed penalty reduction in the second edition of the bill. As shown in the Fiscal Impact Table (p.1), estimated costs are adjusted for the 7 month effective period in FY 2007-08 and an assumed annual inflation rate of 5%.*

Table 3. Estimated Court-Time & Indigent Defense Costs

Trial	*Court-Time, District Attorney Preparation, and Jury Costs*					*Indigent Defense Costs*	
Offense Class	**# Cases**	**Court-Time***	**DA Prep.***	**Jury***	**Court Costs**	**# Cases**	**Defense Cost**
Class H felony	1	$ 3,081	$ 1,590	$ 640	$ 5,311	1	$ 2,032
Class G felony	5	$ 3,874	$ 2,187	$ 920	$34,905	3	$ 7,584
** Estimated costs per case*			*Difference: $29,594*			*Difference: $5,552*	

Plea	*Court-Time, District Attorney Preparation, and Jury Costs*					*Indigent Defense Costs*	
Offense Class	**# Cases**	**Court-Time***	**DA Prep.***	**Jury***	**Court Costs**	**# Cases**	**Defense Cost**
Class H felony	49	$ 135	$ 99	-	$ 11,466	29	$ 2,726
Class G felony	54	$ 159	$ 199	-	$ 19,332	38	$ 6,156
** Estimated costs per case*			*Difference: $7,866*			*Difference: $3,430*	

[6] Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court.

SOURCES OF DATA: 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: Bryce Ball and Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 30, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 517:
Fleeing Accident Scene/Increase Penalty

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	May 30, 2008
Introduced by:	Rep. Moore	**Summary by:**	William R. Gilkeson
Version:	PCS to Second Edition H517-CSRR-49		Committee Counsel

SUMMARY: This Proposed Committee Substitute for House Bill 517 would increase from a Class H felony to a Class G felony the penalty for leaving the scene of an accident in which any person suffers death or serious bodily injury.

CURRENT LAW:

Under current law, a driver whose vehicle is involved in an accident that causes injury or death is required to stop and remain at the scene of the accident until a law enforcement officer completes the investigation or authorizes the driver to leave the scene.

In 2005, G.S. 20-166(a) was amended to prohibit the driver of a vehicle that is involved in an accident from facilitating, allowing or agreeing to the removal of the vehicle from the scene of an accident that results in injury or death prior to law enforcement completing the investigation or consenting to the removal.

Violation of this provision is a Class H felony and also results in the mandatory revocation of the person's driver's license for 1 to 2 years. A judge may order a limited driving privilege during this period, after conviction of a first offense.

BILL ANALYSIS:

House Bill 517 would amend the law to provide that if any person suffers death or serious bodily injury as a result of the accident or collision, the violation of this provision would be a Class G felony. In all other cases, the penalty would remain a Class H felony.

G.S. 14-32.4(a) contains the following definition:

"'Serious bodily injury' is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization."

EFFECTIVE DATE:

This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. (Updating the effective date from Dec. 1, 2007, to Dec. 1, 2008, is the only change the PCS makes to the Second Edition of the bill.)

Karen Cochrane-Brown contributed substantially to this summary.

H0517e2-SMRR-CSRR-49

State of North Carolina
General Court of Justice
Twenty-sixth Prosecutorial District
MECKLENBURG COUNTY

PETER S. GILCHRIST, III
DISTRICT ATTORNEY

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March 20, 2007

Representative Tim Moore
North Carolina General Assembly
Legislative Building
16 West Jones Street
Raleigh, NC 27601

Re: House Bill 517 (Fleeing Accident Scene/Increase Penalty)

Dear Representative Moore:

North Carolina General Statute 20-166 (a), as presently written, addresses those traffic accident "hit and run" situations which involve personal injury, and provides for punishment as a Class H felony, regardless of whether the personal injury is minor, serious, or catastrophic. Our experience in Court has revealed that the two higher levels of personal injury, serious and catastrophic, need more than Class H punishment.

In the hope that this oversight will be rectified, I am proposing that our legislature consider adding to GS 20-166 (a) the following language:

"A willful violation of this subsection shall be punished as (i) a Class H felony if any person suffers minor injury, or (ii) a Class F felony if any person suffers serious injury. For the purposes of this subsection, "serious injury" is defined as "physical injury that causes great pain and suffering", or (iii) a Class C felony if any person suffers serious bodily injury. For the purposes of this subsection, "serious bodily injury" is defined as set forth in GS 14-32.4 (a)."

In regard to a recent case in Mecklenburg County, on January 24, 2007, the defendant, Sean Patrick Armstrong (age 36), pled guilty as charged to Felony Hit and Run with Personal Injury, GS 20-166(a), a Class H felony, and received from the Honorable Forrest Bridges the maximum presumptive range sentence of a minimum of ten months and a maximum of 12 months, active imprisonment in the Department of Corrections.

You may recall from The Charlotte Observer article that this case involved the bicyclist victim, Brian Hanley (age 38), who was hit by Mr. Armstrong's 1993 Chevrolet Silverado pickup truck in the 4000 block of Providence Road on February 13, 2006. Brian Hanley sustained severe brain damage, is confined to a wheelchair, requires full-time care and assistance, has medical bills of approximately one million dollars, and has future surgery pending.

In this case, we had evidence from subsequent admissions by Mr. Armstrong that he was the driver involved in this accident and that after the accident he observed Brian's injuries, and then drove away from the scene of the accident without in fact seeking medical assistance for Brian Hanley. In many hit and run cases, we have the option to charge the driver with the additional, and more serious, crime of Assault With a Deadly Weapon (the vehicle) Inflicting Serious Injury (a Class E felony). This additional charge of AWDWISI is appropriate where there is evidence of personal injury and where there is evidence, not only that the suspect was driving the vehicle in question, but also that the suspect was driving in a dangerous manner under circumstances showing a reckless disregard for the safety of others and a willingness to inflict injury. In the case of Mr. Armstrong, however, we had no evidence of the manner in which Mr. Armstrong had been driving his vehicle at the time of the accident because (1) Mr. Armstrong intentionally fled from the accident scene and (2) the only other witness, Brian Hanley, sustained serious brain damage which resulted in the absence of all of his memory of events which occurred prior to awakening in the hospital after weeks in a coma. Thus, because of Mr. Armstrong's actions and decisions, the State was not in a position to charge Mr. Armstrong with the additional charge of AWDWISI. Unfortunately, even the charge of AWDWISI (being a more serious felony than Hit and Run With Personal Injury) does not allow a judge to fashion an appropriate punishment for an AWDWISI that actually involves catastrophic injuries like Brian Hanley sustained.

As was expressed by Brian Hanley's fiancée, Laurie Griffin, at the sentencing hearing of Mr. Armstrong, "hitting him may have been an accident, but leaving him to die was not an accident. Brian has had to relearn how to breathe, eat, see, speak, and sit. And it has taken him almost a year to be able to do those basic things. He cannot walk, he does not remember the house he lived in and he needs full-time care. Not only did you take away life as he knew it, but you took away a father from two little boys. You took away their childhood. The youngest won't even ride his bike anymore."

In regard to my proposed Class C felony punishment for cases involving "serious bodily injury", it is true that we had no evidence in this case that Mr. Armstrong affirmatively intended to kill Brian Hanley. However, we did have evidence in this case that Mr. Armstrong knowingly and intentionally made the life-altering decision to leave Brian in a

severely injured condition to fend for himself. Brian's doctors have informed Brian's family that they believe that if Brian had received medical intervention sooner, the extent of the brain damage, and its resultant consequences, would have been lessened.

It is my firm belief that in cases such as Brian Hanley's, Class C felony punishment should be available to a judge where the evidence reflects a total disregard on the part of the defendant concerning whether the hit and run victim lives or dies. I believe that it is important to recognize that the defendant Sean Armstrong made a willful decision to protect himself by abandoning Brian Hanley. It appears from the evidence that Brian's injuries were so severe that he would have died, except that a passerby stopped and called 911. Mr. Armstrong's intentional decision in this instance was a knowing decision to seek to avoid criminal responsibility by allowing Brian Hanley to die by intentional neglect, intentional inaction and intentional indifference. In this instance, Mr. Armstrong's decision was clearly the functional equivalent of an intent to kill and our office should, in the future, be able to fully and appropriately prosecute such a case as a Class C felony.

Sincerely,

Peter S. Gilchrist, III
District Attorney

PSG/ebj
cc: Mecklenburg County Legislative Delegation

State of North Carolina
General Court of Justice
27B Judicial District

SUPERIOR COURT JUDGES
FORREST DONALD BRIDGES, SENIOR RESIDENT
JAMES W. MORGAN

Cleveland County Courthouse
100 Justice Place
Shelby, NC 28150
Telephone: 704-484-4876
Facsimile: 704-480-5638

DISTRICT COURT JUDGES
LARRY J. WILSON, CHIEF
ANNA F. FOSTER
K. DEAN BLACK
ALI PAKSOY, JR.

January 26, 2007

Representative Timothy K. Moore
604 Legislative Office Building
Raleigh, NC 27603-5925

Re: Possible Amendments to Hit and Run Statutes

Dear Tim:

This letter will serve to follow up on my recent telephone call to your office.

On January 24, 2007, I presided over a matter in Mecklenburg Superior Court, in which Sean Patrick Armstrong entered a plea of guilty to felonious hit and run involving personal injury to Brian Hanley. Mr. Armstrong had a criminal record of four (4) prior incidents of impaired driving and one prior conviction of possession of crack cocaine. His attorney and the State entered into an agreement that he would plead guilty as charged and receive the maximum possible sentence. This sentence was an active prison sentence of ten (10) to twelve (12) months.

There has been considerable publicity in the Charlotte area since conclusion of this case over the law as it pertains to this area. One of the points of concern was the fact that Mr. Hanley received extremely serious injuries in this accident. He suffered brain damage, is confined to a wheel chair and has significant limitations in speech and motor skills. The situation was compounded by the fact that Mr. Armstrong not only left the scene but took other steps seeking to conceal his involvement in the accident.

My concerns over the facts presented by this particular case has prompted me to suggest that the Legislature consider the possibility of a new class of offense for hit and run involving serious bodily injury. A new level of offense, possibly a Class F felony could be created for situations in which a person leaves the scene of an accident after being involved in a collision causing serious bodily injury to another person. The term "serious bodily injury" already is defined as "bodily injury that

creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain or permanent or protracted loss or impairment of the function of any bodily member or organ or that results in prolonged hospitalization."

Under the present statute, the same punishment is provided for a defendant who leaves the scene of an accident involving extremely minor injuries as a defendant who leaves the scene of an accident with a victim who has suffered possibly fatal injuries. That was exactly the case with Mr. Armstrong.

I hope you will give this matter your consideration and think about the possibility of introducing such a bill in the present session of the House. Please call me if I can be of any help to you.

Sincerely yours,

Forrest D. Bridges

FDB/ja

Judge apologizes for hit-and-run sentence

Driver gets up to year; bicyclist suffered brain injury

GARY L. WRIGHT
gwright@charlotteobserver.com



DAVIE HINSHAW

Sean Armstrong, in left photo, was the hit-and-run driver. Brian Hanley (right photo) is recovering from a brain injury. His fiancee, Laurie Griffin, told the court he struggles to do basic tasks.

Even the judge acknowledged the sentence wasn't tough enough.

Sean Patrick Armstrong, accused of striking a bicyclist with his pickup last February on Providence Road in south Charlotte and then fleeing the scene, will spend no more than a year in prison.

His victim, Brian Hanley, suffered a traumatic brain injury and remains in a wheelchair.

Armstrong on Wednesday pleaded guilty as charged to felony hit and run resulting in injury. Mecklenburg Superior Court Judge Don Bridges told Hanley and his parents that the sentence -- 10 months to a year -- was the maximum that he could impose.

"And yet everyone in this family, in fact everyone in this courtroom, probably knows this sentence is not severe enough for what has happened," Bridges said. "For that, I'm sorry."

Mecklenburg Assistant District Attorney David Graham said Armstrong's case shows that North Carolina's hit-and-run laws are inadequate to appropriately punish those who cause serious injuries.

"Armstrong's sentence totally fails to address the devastating injuries to Brian Hanley," the prosecutor said. "I hope our legislators will make the punishments tougher for these extraordinary cases."

Armstrong, 36, was driving a 1993 Chevrolet Silverado pickup when he struck Hanley on his bicycle along Providence Road near Fairview Road late at night. Hanley, who suffered head trauma and a broken pelvis, leg and ribs, spent weeks in a coma.

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"Hitting him may have been an accident, but leaving him to die was not an accident," Laurie Griffin, Hanley's fiancee, told the judge.

Wiping tears from her eyes, Griffin talked about the damage Armstrong had inflicted on her fiance and his family.

"Brian has had to relearn how to breathe, eat, see, speak, sit. And it has taken him almost a year to be able to do those basic things," she said. "He cannot walk, he does not remember the house he lived in, and he needs full-time care.

"Not only did you take away life as he knew it, but you took away a father from two little boys. You took away their childhood. The youngest won't even ride his bike anymore."

Griffin, 33, told the judge that Armstrong is lucky her fiance did not die because he would then have been charged with manslaughter.

"You will go to jail, but your life will go on and you can start over," she said. "Brian is not so lucky. He will have to spend every day working to get back what you took away from him that night.

"So when you're alone and feeling sorry for yourself, I hope you remember Brian Hanley. You will have to live the rest of your life with what you have done. And so will he."

In an interview after the sentencing, Larry and Jane Hanley said Armstrong's prison sentence for what he'd done to their son was too short. But the parents said they understood it was all the judge could do.

"If it was up to me," Larry Hanley said, "I'd sentence him to sit in a wheelchair as long as Brian has to."

Brian Hanley, 38, who was a service manager for an auto dealership at the time of the wreck, said: "I just wanted him to admit he did this to me."

During Wednesday's hearing, Assistant DA Graham outlined Armstrong's criminal record: four convictions for driving under the influence and a conviction for possession of crack cocaine.

Defense attorney George Laughrun told the judge that Armstrong accepted responsibility for his wrongdoing.

"There is no excuse for it," the defense lawyer said. "He will live with the damage he has caused for the rest of his life.

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"He knows he's leaving the courtroom today through the side door."

After the sentencing, as Armstrong was handcuffed and led from the courtroom by a deputy, Griffin, crying, bent down and hugged her fiance.

"Love you," Hanley told her.

She then kissed him.

"Thank you," he said.

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 2080
PROPOSED COMMITTEE SUBSTITUTE S2080-CSTC-60 [v.2]

6/2/2008 9:31:24 AM

Short Title: UNC Campus Safety/Funds. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO SUPPORT THE RECOMMENDATIONS OF THE UNC CAMPUS SAFETY TASK FORCE, TO DIRECT THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA IN CONJUNCTION WITH THE STATE BOARD OF EDUCATION, THE STATE BOARD OF COMMUNITY COLLEGES, AND THE NORTH CAROLINA INDEPENDENT COLLEGES AND UNIVERSITIES TO STUDY THE ISSUE OF PROVIDING QUALIFIED IMMUNITY TO HEALTH PROFESSIONALS FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION WHEN THE DISCLOSURE IS FOR THE PURPOSE OF PREVENTING OR MITIGATING HARM TO OTHERS, AND TO MAKE IT A CRIMINAL OFFENSE TO COMMUNICATE A THREAT OF MASS VIOLENCE ON EDUCATIONAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of eleven million seven hundred thousand dollars ($11,700,000) in recurring funds and the sum of seventeen million five hundred thousand dollars ($17,500,000) in nonrecurring funds for the 2008-2009 fiscal year to support the recommendations of the UNC Campus Safety Task Force.

SECTION 2.(a) The Board of Governors of the University of North Carolina, in conjunction with the State Board of Community Colleges, the State Board of Education, and the North Carolina Independent Colleges and Universities shall study the issue of providing qualified immunity to mental health and health professionals for the disclosure of confidential information when the disclosure is for the purpose of preventing or mitigating harm to others, consistent with the recommendations of the UNC Campus Safety Task Force. The Board of Governors shall seek the input of

licensing bodies of the mental health and health professionals when developing its recommendations.

SECTION 2.(b) The Board of Governors of the University of North Carolina shall submit a final report of the results of this study to the Joint Select Committee on Governmental Immunity no later than December 1, 2008, including any legislative recommendations for consideration during the 2009 General Assembly.

SECTION 3. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-277.6. Communicating a threat of mass violence on educational property.**

(a) The following definitions apply in this section:

(1) Educational property. – As defined in G.S. 14-269.2.

(2) Mass violence. – Physical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) or death to two or more people.

(3) School. – As defined in G.S. 14-269.2.

(b) A person is guilty of a Class H felony if without lawful authority the person does all of the following:

(1) Willfully threatens to commit an act of mass violence on educational property, or at a curricular or extracurricular activity sponsored by a school.

(2) Communicates that threat to any person or group of persons by any means of communication.

(3) Makes the threat in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out.

(c) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the threat, pursuant to Article 81C of Chapter 15A of the General Statutes."

SECTION 4. Section 1 of this act becomes effective July 1, 2008. Section 3 of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 2080

Short Title: UNC Campus Safety/Funds. (Public)

Sponsors: Senators Rand and Hagan.

Referred to: Judiciary I (Civil).

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO SUPPORT THE RECOMMENDATIONS OF THE UNC CAMPUS SAFETY TASK FORCE, TO DIRECT THE UNIVERSITY OF NORTH CAROLINA IN CONJUNCTION WITH THE DEPARTMENT OF PUBLIC INSTRUCTION, THE DEPARTMENT OF COMMUNITY COLLEGES, AND NORTH CAROLINA INDEPENDENT COLLEGES AND UNIVERSITIES TO STUDY THE ISSUE OF PROVIDING QUALIFIED IMMUNITY TO HEALTH PROFESSIONALS FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION WHEN THE DISCLOSURE IS FOR THE PURPOSE OF PREVENTING OR MITIGATING HARM TO OTHERS, AND TO MAKE IT A CRIMINAL OFFENSE TO COMMUNICATE A THREAT OF MASS VIOLENCE ON EDUCATIONAL OR COMMERCIAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of eleven million seven hundred thousand dollars ($11,700,000) in recurring funds and the sum of seventeen million five hundred thousand dollars ($17,500,000) in nonrecurring funds for the 2008-2009 fiscal year to support the recommendations of the UNC Campus Safety Task Force.

SECTION 2.(a) The University of North Carolina, in conjunction with the Department of Community Colleges, the Department of Public Instruction, and the North Carolina Independent Colleges and Universities shall study the issue of providing qualified immunity to mental health and health professionals for the disclosure of confidential information when the disclosure is for the purpose of preventing or mitigating harm to others, consistent with the recommendations of the UNC Campus Safety Task Force. The University shall seek the input of licensing bodies of the mental health and health professionals when developing its recommendations.

SECTION 2.(b) The University of North Carolina shall submit a final report of the results of this study to the Joint Select Committee on Governmental Immunity, including any legislative recommendations for consideration during the 2009 General Assembly.

SECTION 3. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-277.5. Communicating a threat of mass violence on educational or commercial property.**

(a) The following definitions apply in this section:

(1) Commercial property. – The term includes a small business.

(2) Educational property. – As defined in G.S. 14-269.2.

(3) Mass violence. – Physical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) or death to two or more people.

(4) School. – As defined in G.S. 14-269.2.

(b) A person is guilty of a Class H felony if without lawful authority the person does all of the following:

(1) Willfully threatens to commit an act of mass violence on educational property, at a curricular or extracurricular activity sponsored by a school, or on commercial property.

(2) Communicates that threat to any person or group of persons by any means of communication.

(3) Makes the threat in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out.

(c) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the threat, pursuant to Article 81C of Chapter 15A of the General Statutes."

SECTION 4. Section 1 of this act becomes effective July 1, 2008. Section 3 of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 2080:
UNC Campus Safety/Funds

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	June 3, 2008
Introduced by:	Sen. Rand	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to First Edition S2080-CSTC		

SUMMARY: ***The proposed committee substitute for Senate Bill 2080 would do the following:***

1. Appropriate $11,700,000 in recurring funds and $17,500,000 in nonrecurring funds for the 2008-2009 fiscal year to support the UNC Campus Safety Task Force Recommendations.

2. Direct the Board of Governors of the University of North Carolina to study the issue of providing qualified immunity to mental health and health care professionals for disclosure of confidential information for the purpose of preventing harm to others.

3. Create a new felony for communicating a threat of mass violence on educational property.

The PCS makes technical changes and removes communicating threats of mass violence on commercial property from Section 3.

CURRENT LAW:

Section 2

Federal Law: The Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, which protects a student's educational records from disclosure without prior written consent, provides an exception permitting disclosure of records to "appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals." 34 C.F.R. § 99.36(10). The Health Insurance Portability and Accountability Act (HIPAA), which may cover student health records in some circumstances, also provides an exception for disclosure of records when necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. 45 C.F.R. § 164.512(j).

State Law: G.S. 122C-55(d) provides an exception to the right of confidentiality for mental health treatment, permitting a responsible professional to disclose confidential information when in the professional's opinion there is an imminent danger to the health or safety or the client or another individual, or the likelihood of the commission of a felony or violent misdemeanor.

Section 3

G.S. 14-277.1 makes it a Class 1 misdemeanor for a person to:

1) willfully threaten to physically injure a person or that person's immediate relative or damage that person's property,

2) communicate the threat to the other person orally, in writing, or by any other means,

3) make the threat in a manner and under circumstances which would cause a reasonable person to believe the threat is likely to be carried out, and

4) the threatened person believes the threat will be carried out.

G.S. 14-277.5 makes it a Class H felony for a person to knowingly make a false report by any means of communication to any person or group of persons that an act of mass violence is going to occur on educational property or at a curricular or extracurricular event. A person convicted under this statute may be ordered to pay restitution, including costs and damages from disruption of normal activity as a result of the report.

BILL ANALYSIS: The PCS for Senate Bill 2080 would do the following:

Section 1: Appropriate $11,700,000 in recurring funds and $17,500,000 in nonrecurring funds for the 2008-2009 fiscal year to support the recommendations of the UNC Campus Safety Task Force.

Section 2: Direct the Board of Governors of The University of North Carolina (BOG), in conjunction with the State Board of Community Colleges, State Board of Education, and North Carolina Independent Colleges and Universities, to study the issue of providing qualified immunity to mental health and health professionals for the disclosure of confidential information for the purpose of preventing harm to others. The BOG is directed to seek input from the licensing bodies of mental health and health professionals, and to submit a final report of the results of the study to the Joint Select Committee on Governmental Immunity, including legislative recommendations for the 2009 Session, no later than December 1, 2008.

Section 3: Create a new criminal felony – Communicating a threat of mass violence on educational property.

- ***Definitions:***
  - Educational property – As defined in G.S. 14-269.2 - Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education or school board of trustees, or directors for the administration of any school.
  - Mass Violence – Physical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) or death to two or more people.
  - School – As defined in G.S. 14-296.2 - A public or private school, community college, college, or university.
- ***Offense:*** A person is guilty of a Class H felony if, without lawful authority, the person:
  1. Willfully threatens to commit an act of mass violence on educational property, or at a curricular or extracurricular activity sponsored by a school,
  2. Communicates that threat to any person or persons by any means of communication, and
  3. Makes the threat in a manner and under circumstances that would cause a reasonable person to believe the threat is likely to be carried out.
- ***Restitution:*** The court may order restitution, including costs and consequential damages resulting from disruption of normal activity but for the threat, pursuant to the Structured Sentencing Act.

EFFECTIVE DATE: Section 1 of this act would become effective July 1, 2008. Section 3 would become effective December 1, 2008, and would apply to offenses committed on or after that date. The remainder of the bill would become effective when it becomes law.

BACKGROUND: The requested appropriation and study of qualified immunity are recommendations of the UNC Board of Governors as a result of The University of North Carolina Campus Safety Task Force Report to the President.

S2080e1-SMTC-CSTC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 3, 2008 4 p.m.

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NCBA
DAVE Simpson	CAOC
Michael Thompson	DOMINION
Patrick Buffkin	NMRS
Cameron Hanley	Electricities of NC
John Medlin	Gen. Counsel
[illegible]	[illegible]
Scott Gardner	Duke Energy
Keith Hall	Progress

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 3, 2008 4 p.m.

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Dick Taylor	NCAOC
Sarah Preston	ACLU-NC
Paul Pulley	NCATL
Andy Willis	NWC-GA
Julia White	NC AG's office
Debra Dorr	AT+T
Mitzy Greene	NCGA
John Madler	NC Sentencing Commission

SENATE JUDICIARY I COMMITTEE
(Civil)

June 10, 2008
10:00 a.m. –Room 1027

MINUTES

The Senate Judiciary Committee met Tuesday, June 10 in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt, Vice Chair Dan Clodfelter, Vice Chair Phil Berger, Sen. Andrew Brock, Sen. Harry Brown, Sen. Pete Brunstetter, Sen. David Hoyle, Sen. Clark Jenkins, Sen. Ellie Kinnaird, Sen. Vernon Malone, Sen. Floyd McKissick, Sen. Tony Rand, Sen. Richard Stevens, and Sen. Jerry Tillman. Staff present were committee counselors Erika Churchill, Bill Gilkeson, Kara McGraw and Hal Pell, Research Assistant Denise Huntley and Committee Assistants Jan Lee and Jessica Kozma Bennett.

Chairman Nesbitt called the meeting to order at 10:14 a.m.

House Bill 1113, calendared for discussion at the day's meeting was removed due to the absence of the bill sponsor, Representative Glazier, due to surgery. A second bill, Senate Bill 1736 was also pulled from the day's agenda.

Chairman Nesbitt then called on Staff Counsel Bill Gilkeson to explain Senate Bill 1766, a liability bill for private entities. Mr. Gilkeson began saying there was a technical amendment to the bill. The amendment was distributed to membership. Senator Brunstetter moved to adopt the amendment and the motion carried by unanimous vote. He then explained that the bill provides immunity for those doing work in a time of emergency, and that another bill calendared for the day's meeting, Senate Bill 1684, in part contained Senate Bill 1766. With little discussion Senator Hoyle moved for favorable report as amended. Senator Brunstetter then motioned to postpone Senate Bills 1684 and 1776. Both motions carried unanimously.

Senate Bill 1753 was then discussed. A Proposed Committee Substitute was distributed to membership. Chairman Nesbitt recognized counsel Kara McGraw to explain the bill. Ms. GcGraw said there were technical changes to the original bill. Senator Hoyle asked how the background checks were paid for. Ms. McGraw answered that the applicant has to pay. Senator Hoyle then moved for favorable report, unfavorable as to original bill. The motion carried unanimously.

Chairman Nesbitt then called to discussion Senate Bill 1799, an act allowing background checks for potential Division of Motor Vehicle employees. A Proposed Committee Substitute was distributed to members. Senator Clodfelter moved for adoption of the Proposed Committee Substitute. The motion carried unanimously.

Senator Jenkins, sponsor of the bill, explained that the bill allows the Division of Motor Vehicles to execute background criminal checks on potential employees. Mr. Pell added the there is a provision for a fee offset in the bill. Chairman Nesbitt asked whether the bill then needed to be referred to finance. Mr. Pell answered that it did. Senator Brock moved for favorable report, unfavorable as to original bill. The motion carried unanimously. The bill is referred to Finance Committee.

Senator Clodfelter then motioned to reconsider passage of Senate Bill 1753 Proposed Committee Substitute, allowing that bill to also be referred to Finance Committee. The motion for referred passed unanimously and the bill is referred to Finance Committee.

The meeting adjourned at 10:57 a.m.

Respectfully submitted,

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

June 10, 2008
After session
Room 1027

MINUTES

The Senate Judiciary I (Civil) Committee met Wednesday, June 10, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the after session meeting to order at 4:40 p.m.

Also in attendance with Chairman Nesbitt were Vice-Chairman Phil Berger, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator David Hoyle, Senator Clark Jenkins, Senator Eleanor Kinnaird, and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw, Hal Pell, Research Assistant Denise Huntley and Committee Assistant Jessica Kozma Bennett

A meeting notice was sent to membership and staff June 9.

House Bill 933

The day's meeting was called in response to an issue regarding the constitutional charge and federal mandate for all North Carolina children to receive a free public education and provisions of House Bill 933. In the redraft of the bill, Ms. McGraw explained changes to a previous edition. Ms. Leanne Winner, lobbyist for the North Carolina Association of School Board, was called on by Chairman Nesbitt. A PCS was distributed to members, and motioned by Senator Hoyle to be rolled into a new PCS for favorable report. The motion carried unanimously.

The meeting was adjourned at 5:02.

Respectfully submitted,

Martin Nesbitt

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary I — 6-10-08 — 4:30 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Beatty	Catawba County
K. Hawkins	Catawba County
[illegible]	NCLM
Misty Green	NCGA
Mary Harrison	LA - Rep Moore
Cameron Hunley	Electricities of NC, Inc
[illegible]	Electricities
Kathy Hawkins	PE
Scott Gallo	Duke Energy
Joe P. Mayhew	GMC Assoc
Richard Thompson	Dominion

VISITOR REGISTRATION SHEET

Judiciary I — 6-10-08 4:30 PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. Daniel Auburn	Electricities of N.C., Inc.
Patrick Buffkin	NMRS
Bates Gunnels	NCBA
Jami Fitzgerald	NCFPC
Anna Beavon Gravely	NCFPC
Leanne Kinnier	NCSBA
Bill O'Donnell	NCSBA
John McKay	Gov office
Boyd Cauble	City of Charlotte
Lee Worsley	Catawba County
Lynn Lail	Catawba County

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee

6-10-08 4:30 PM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Medlin	NCAEC

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

June 12, 2008, 10 a.m.

MINUTES

The Senate Judiciary I (Civil) Committee met Thursday, June 12, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 10:10 a.m..

In attendance were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator Vernon Malone, Senator Tony Rand, Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw and Hal Pell. Committee assistant Jessica Kozma Bennett and research assistant Denise Huntley were also present.

Senate Bill 1805

Chairman Nesbitt recognized Senator Malone to speak to Senate Bill 1805, an act authorizing the Division of Motor Vehicles to consider recommendations from the clerk of court to determine whether to revoke the license of an incompetently adjudicated person. The bill was recommended, it reads, by the Commission on Aging.

A Proposed Committee Substitute was distributed to members and adopted for discussion by a motion by Senator Malone. Chairman Nesbitt called on staff attorney Erika Churchill to discuss the bill. Ms. Churchill began saying that the bill allows a family to make a request to the Division of Motor Vehicles to revoke a driver's license due to mental incompetence. Originally, the bill originated from a prior House study into guardianship issues, she said. Senator Malone added that there were two issues concerning the bill, one, the safety of the mentally incompetent and State motorists; and, two, independence.

Senator Jenkins moved for favorable report, unfavorable as to original bill.

Chairman Nesbitt recognized Lauren Freeman, the Wake County Clerk of Court. Ms. Freeman said that the bill allowed clerks of court more information, including recent accidents. She added that it is a benefit to have the DMVs participation in a decision.

The motion for favorable report, unfavorable as to original bill passed unanimously.

Senate Bill 2081

Chairman Nesbitt recognized Senator Rand to speak to Senate Bill 2081, a bill requiring reporting of any involuntary mentally committed person to the National Instant Criminal Background Check System. A PCS was distributed to members and adopted for discussion through a motion by Senator Rand. Discussion was called by Chairman Nesbitt.

Senator Rand explained that the bill was drafted pending a 2005 Virginia Tech incident where a student that had previously been involuntary committed killed 32 students and teachers. Attorney General Roy Cooper was recognized by the Chair who reiterated Senator Rand's remarks and said that a study committee was compiled after the incident and suggestions made to campuses in North Carolina. The Attorney General then said the bill would close a loophole in current state statutes.

An amendment was passed to members and motioned for adoption by Senator Rand. The amendment passed unanimously. Chairman Nesbitt then asked staff to explain the bill. Mr. Gilkeson repeated that when a person is involuntarily committed they are reported to NICS, and that there is a restoration process to remove the commitment bar in three areas: in possession, purchase or transfer of firearms. Mr. Gilkeson continued and said there were some technical provisions to the bill, including how a person may seek restoration and a fiscal appropriation. Senator Kinnaird asked what constituted an involuntary commitment.

Dr. John Wallace from North Carolina State University was recognized and said that an outpatient involuntary commitment was when a person is a danger to themselves but can be handled by family or the community. Senator Brunstetter asked if a person has to go through a full commitment hearing. Dr. Wallace said the person goes in front of a judge, and that there are two determinations.

Vice Chairman Berger said although this is a response to a tragic event, the response may overreach the rights of the second amendment. He questioned whether references to current involuntary outpatient commitment guidelines would already address the issue. He also questioned federal requirements. Senator Rand replied noting the Virginia Tech shooting. Paul Balong, president of Grassroots North Carolina, said that in North Carolina being committed to outpatient care has to be committed as an inpatient. Chairman Nesbitt said the question of what we can do regarding federal requirements had to be answered. Attorney General Roy Cooper was recognized and answered that under current federal law you cannot buy a gun regardless of voluntary and involuntary commitment. Information released, he said, is on those involuntarily committed.

Senator Jenkins commented that it was better to be on the safe side and moved for favorable report, unfavorable as to original bill,. Chairman Nesbitt added that he did not see a situation where someone involuntarily committed should be able to buy a gun. The chairman then asked Vice Chairman Berger if he had an amendment. Vice Chairman Berger said that he was not prepared to have an amendment in committee but would when the bill is heard on the Senate floor. With a motion made for sequential referral to the Appropriations Committee, a new PCS incorporating the amendment passed by divided vote. The meeting was adjourned at 10:58 a.m.

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

June 12, 2008, 10 a.m.

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The meeting was adjourned at 10:58 a.m.

Respectfully submitted,

Senator Martin L. Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1805*

Short Title:	No Auto. Revoke/Driv. Lic./Incompetent Person.	(Public)
Sponsors:	Senators Malone, Dorsett, Forrester; Berger of Franklin, Dannelly, Jones, McKissick, Purcell, and Stevens.	
Referred to:	Judiciary I (Civil).	

May 21, 2008

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DIVISION OF MOTOR VEHICLES TO CONSIDER RECOMMENDATIONS FROM THE CLERK OF COURT IN DETERMINING WHETHER TO REVOKE THE DRIVERS LICENSE OF A PERSON ADJUDICATED INCOMPETENT UNDER THE GUARDIANSHIP LAWS, AS RECOMMENDED BY THE HOUSE STUDY COMMITTEE ON STATE GUARDIANSHIP LAWS AND THE STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-17.1(a) reads as rewritten:

"(a) The Commissioner, upon receipt of notice that any person has been legally adjudicated incompetent or has been involuntarily committed to an institution for the treatment of alcoholism or drug addiction, shall forthwith make inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle. <u>If a person has been adjudicated incompetent pursuant to the guardianship laws under Chapter 35A of the General Statutes, in making an inquiry into the facts, the Commissioner shall consider the clerk of court's recommendation regarding whether the incompetent person should be allowed to retain his or her driving privilege.</u> Unless the Commissioner is satisfied that such person is competent to operate a motor vehicle with safety to persons and property, he shall revoke such person's driving privilege. Provided that if such person requests, in writing, a hearing, he shall retain his license until after the hearing, and if the revocation is sustained after such hearing, the person whose driving privilege has been revoked under the provisions of this section, shall have the right to a review by the review board as provided in G.S. 20-9(g)(4) upon written request filed with the Division."

SECTION 2. This act is effective when it becomes law and applies to persons adjudicated incompetent under Chapter 35A of the General Statutes on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1805*
PROPOSED COMMITTEE SUBSTITUTE S1805-CSST-105 [v.1]

6/2/2008 1:28:06 PM

Short Title: No Auto. Revoke/Driv. Lic./Incompetent Person. (Public)

Sponsors:

Referred to:

May 21, 2008

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SECTION 2. This act is effective October 1, 2008, and applies to persons adjudicated incompetent under Chapter 35A of the General Statutes on or after that date.

SENATE BILL 1805:
No Auto. Revoke/Driv. Lic./Incompetent Person

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 2, 2008
Introduced by:	Sen. Malone	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S1805-CSST-105		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 1805 requires DMV to consider the recommendations from the Clerks of Superior Court when determining whether to revoke the driver's license of a person who has been adjudicated incompetent under the State's guardianship laws.***

[As introduced, this bill was identical to H2391, as introduced by Reps. Bordsen, Goodwin, Farmer-Butterfield, Pierce, which is currently in House Judiciary III. As introduced, the bill was identical to H796, as introduced by Reps. Borsden and Goodwin, which did not make the crossover deadline.]

CURRENT LAW: G.S. 20-17.1(b) requires that the clerk of court in which a person is adjudicated as incompetent shall send a certified copy "of abstract" to the Commissioner of Motor Vehicles. Upon receiving notice that a person has been legally adjudicated incompetent, the Commissioner shall determine whether the person is competent to operate a motor vehicle. The person's driver's license shall be revoked unless the Commissioner is satisfied that the person is competent to drive. If a person requests, in writing, a hearing, then the person retains the license until after the hearing. If the revocation is sustained after the hearing, then the person whose driver's license has been revoked has the right to a review board hearing. The request for this review must be written and filed with the Division.

EFFECTIVE DATE: The pcs is effective October 1, 2008, and applies to persons adjudicated incompetent under Chapter 35A on or after that date.

BACKGROUND: According to information the Administrative Office of the Courts, presented to the November 2, 2006 meeting of the House Study on State Guardianship Laws, limited guardians may be appointed when "the ward is able to make certain decisions on his or her behalf." Limited guardianships are especially useful in cases when the incompetency is episodic, such as in persons with mental illness who function well while on their medication. State law requires clerks to notify the Division of Motor Vehicles of a finding of incompetency and DMV usually revokes the person's license. The clerks believe that many of these persons can still drive and that the clerk should have the ability to recommend that the license not be revoked. There is an appeals process from the decision but the process takes time and the ward often has to hire counsel to be represented at the hearing.

In November 2006, one of the top three recommendations of the Clerks of Superior Court and the Administrative Offices of the Courts to the House Study Committee on State Guardianship Laws was to "allow clerks of court to have authority to decide if a drivers' license can be maintained on adjudication of incompetency." The House Study Committee recommended that the Division of Motor Vehicles not automatically revoke a driver's license of an incompetent if the clerk of superior court recommends that the incompetent be allowed to retain the drivers' license. House Bill 796 received a favorable report in the House Committee on Aging and was referred to House Judiciary II. It was not heard in House Judiciary II and House Bill 796 is not eligible for consideration during the 2008 Session.

On April 10, 2008, the Study Commission on Aging heard a presentation on guardianship and on the issues surrounding an increase in the amount of a ward's personal property that a guardian can sell, and on the automatic revocation of the driver license of an incompetent. The Study Commission on Aging supports the work of the House Study Committee on State Guardianship Laws and recommends the enactment of this bill.

S1805e1-SMST-CSST-105

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1805*
PROPOSED COMMITTEE SUBSTITUTE S1805-CSST-105 [v.1]

6/2/2008 1:28:06 PM

Short Title: No Auto. Revoke/Driv. Lic./Incompetent Person. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

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SECTION 2. This act is effective October 1, 2008, and applies to persons adjudicated incompetent under Chapter 35A of the General Statutes on or after that date.

SENATE BILL 1805:
No Auto. Revoke/Driv. Lic./Incompetent Person

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 2, 2008
Introduced by:	Sen. Malone	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition S1805-CSST-105		Committee Counsel

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EFFECTIVE DATE: The pcs is effective October 1, 2008, and applies to persons adjudicated incompetent under Chapter 35A on or after that date.

BACKGROUND: According to information the Administrative Office of the Courts, presented to the November 2, 2006 meeting of the House Study on State Guardianship Laws, limited guardians may be appointed when "the ward is able to make certain decisions on his or her behalf." Limited guardianships are especially useful in cases when the incompetency is episodic, such as in persons with mental illness who function well while on their medication. State law requires clerks to notify the Division of Motor Vehicles of a finding of incompetency and DMV usually revokes the person's license. The clerks believe that many of these persons can still drive and that the clerk should have the ability to recommend that the license not be revoked. There is an appeals process from the decision but the process takes time and the ward often has to hire counsel to be represented at the hearing.

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S1805e1-SMST-CSST-105

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 2081*

Short Title:	Firearms/Mental Incompetence.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I (Civil).	

May 28, 2008

A BILL TO BE ENTITLED

AN ACT REQUIRING THE COURT AFTER JUDICIAL DETERMINATION OF INVOLUNTARY COMMITMENT TO REPORT THE FACT OF THE COMMITMENT TO THE NATIONAL CRIMINAL BACKGROUND SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-54 is amended by adding the following new subsection to read:

"(d1) After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of court shall, as soon as practicable, transmit a report of the commitment to the National Instant Criminal Background Check System (NICS). The clerk shall also report a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to trial. The Clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 (18. § U.S.C. 925(c),) shall update the person's record in the NICS This record of involuntary commitment shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. The Administrative Office of the Courts and the Department of Health and Human Services shall establish protocols to facilitate the transmission of this information to NICS."

SECTION 2. Article 3 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"**§ 122C-54.1. Restoration of right to purchase firearm.**

(a) Any individual over the age of 18 may apply for the restoration of the right to purchase, possess, or transfer a firearm when the individual no longer requires treatment or medication for a condition which resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter. No individual who has been found not guilty by reason of insanity may petition a court for restoration of the right to purchase, possess, or transport a firearm.

(b) Subsequent to a judicial determination that an individual is subject to the commitment procedures in Article 5 of this Chapter, and ordered to undergo either inpatient or outpatient treatment, the individual, if over the age of 18, and upon the expiration of any current inpatient or outpatient commitment, may file a petition for an adjudication by the district court judge that the petitioner is no longer undergoing treatment or medication for a condition that resulted in commitment and is no longer a danger to himself or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C.§ 922 and G.S. 14-404 and G.S. 14-415.12.

(c) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination that either inpatient or outpatient treatment was appropriate. An individual disqualified from firearms possession due to a comparable out-of-State mental commitment shall make application in the county of residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner, the district attorney, and designated representative for the North Carolina Attorney General's office. Copies of the petition must be served on the director of the inpatient and outpatient treatment facility, in-State or out-of-State, the district attorney in the petitioner's current county of residence, and a designated representative for the North Carolina Attorney General's office.

(d) Contemporaneous with the petition, the petitioner must file an affidavit by a psychiatrist or eligible psychologist that the petitioner is no longer undergoing treatment or medication for a condition resulting in commitment and is no longer a danger to himself or others for purposes of the purchase, possession, or transfer of firearms. The burden is on the petitioner to establish by clear and convincing evidence that the petitioner's possession of firearms no longer poses a danger to himself or others. The district attorney or designated representative from the North Carolina Attorney General's office shall present any and all relevant information which may establish that the petitioner's possession of firearms would pose an undue risk of harm to the petitioner or the public. For these purposes, the district attorney or designated representative from the North Carolina Attorney General's office may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney or designated representative from the North Carolina Attorney General's office to receive any mental health records of the applicant. The proceeding shall be open to the public. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying.

(e) Upon a judicial determination that a petitioner's possession of firearms is no longer a danger to the petitioner or the public, the clerk of superior court shall forward the order to the NICS for updating of the respondent's record."

SECTION 3.(a) G.S. 14-404 is amended by adding the following new subsection to read:

"(g) The sheriff shall issue a license or permit for the purchase of a firearm under this section to an individual denied a permit under subdivision (4) of subsection (c) of

this section if the individual's rights to purchase a firearm have been restored under G.S. 122C-54.1.

SECTION 3.(b) G.S. 14-415.12(b) is amended by adding the following new subsection to read:

"(c) The sheriff shall issue a permit for the purchase or possession of a firearm under this section to an individual denied a permit under subdivision (6) of subsection (b) of this section if the individual's rights to purchase or possess a firearm have been restored under G.S. 122C-54.1."

SECTION 4. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of twenty-five thousand dollars ($25,000) for the 2008-2009 fiscal year to carry out the provisions of this act.

SECTION 5. Sections 1 through 3 of this act become effective December 1, 2008. Section 4 of this act becomes effective July 1, 2008. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 2081*
PROPOSED COMMITTEE SUBSTITUTE S2081-CSRR-50 [v.9]

6/11/2008 6:42:23 PM

Short Title: NICS Reporting/Restoration. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REPORTING OF INVOLUNTARY MENTAL COMMITMENT TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; AND TO PROVIDE FOR A RESTORATION PROCESS TO REMOVE THE COMMITMENT BAR TO PURCHASE, POSSESSION, AND TRANSFER OF FIREARMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-54 is amended by adding the following new subsection to read:

"(d1) After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of superior court in the county where the judicial determination was made shall, as soon as practicable, cause a report of the commitment to be transmitted to the National Instant Criminal Background Check System (NICS). The clerk shall also cause to be transmitted to NICS a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to criminal trial. The clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 or any applicable federal law, shall cause the individual's record in NICS to be updated. The record of involuntary commitment shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. The clerk shall effect the transmissions to NICS required by the subsection according to protocols which shall be established by the Administrative Office of the Courts."

SECTION 2. Article 3 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"**§ 122C-54.1. Restoration process to remove mental commitment bar.**

(a) Any individual over the age of 18 may petition for the removal of the mental commitment bar to purchase, possess, or transfer a firearm when the individual no

longer suffers from the condition that resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C.§ 922, G.S. 14-404, and G.S. 14-415.12. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. No individual who has been found not guilty by reason of insanity may petition a court for restoration under this section.

(b) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination that either inpatient or outpatient treatment was appropriate or in the district court of the county of the petitioner's residence. An individual disqualified from firearms possession due to a comparable out-of-State mental commitment shall make application in the county of residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the district attorney. Copies of the petition must be served on the director of the inpatient and outpatient treatment facility, in-State or out-of-State, and the district attorney in the petitioner's current county of residence.

(c) The burden is on the petitioner to establish by clear and convincing evidence that the petitioner no longer suffers from the condition that resulted in commitment and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C.§ 922, G.S. 14-404, and G.S. 14-415.12. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. Upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. Unless the court closes the hearing in accordance with this subsection, the proceeding shall be open to the public. Upon motion by the petitioner, the court may close the hearing to the public unless the court finds that the public interest would be better served by conducting the hearing in public. The district court shall enter an order that the petitioner does or does not continue to suffer from the condition that resulted in commitment and does or does not continue to pose a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C.§ 922, G.S. 14-404, and G.S. 14-415.12. petitioner's possession or use of firearms does or does not continue to pose a danger to self or others. The court shall include in its order the specific findings of fact on which it bases its decision. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a District Attorney and approved by

the Attorney General. An attorney so designated shall have all the powers of the district attorney under this section.

(d) Upon a judicial determination to grant a petition under this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record."

SECTION 3.(a) G.S. 14-404 is amended by adding the following new subsection to read:

"(g) An applicant shall not be ineligible to receive a permit under subsection (4) of subsection (c) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1.

SECTION 3.(b) G.S. 14-415.12 is amended by adding the following new subsection to read:

"(c) An applicant shall not be ineligible to receive a concealed carry permit under subdivision (6) of subsection (b) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1."

SECTION 4. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of twenty-five thousand dollars ($25,000) for the 2008-2009 fiscal year to carry out the provisions of this act.

SECTION 5. Sections 1 through 3 of this act become effective December 1, 2008. Section 4 of this act becomes effective July 1, 2008. The remainder of this act is effective when it becomes law.

Changed

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 2081*

Short Title:	Firearms/Mental Incompetence.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I (Civil).	

May 28, 2008

A BILL TO BE ENTITLED

AN ACT REQUIRING THE COURT AFTER JUDICIAL DETERMINATION OF INVOLUNTARY COMMITMENT TO REPORT THE FACT OF THE COMMITMENT TO THE NATIONAL CRIMINAL BACKGROUND SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-54 is amended by adding the following new subsection to read:

"(d1) After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of court shall, as soon as practicable, transmit a report of the commitment to the National Instant Criminal Background Check System (NICS). The clerk shall also report a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to trial. The Clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 (18. § U.S.C. 925(c),) shall update the person's record in the NICS This record of involuntary commitment shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. The Administrative Office of the Courts and the Department of Health and Human Services shall establish protocols to facilitate the transmission of this information to NICS."

SECTION 2. Article 3 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"**§ 122C-54.1. Restoration of right to purchase firearm.**

(a) Any individual over the age of 18 may apply for the restoration of the right to purchase, possess, or transfer a firearm when the individual no longer requires treatment or medication for a condition which resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter. No individual who has been found not guilty by reason of insanity may petition a court for restoration of the right to purchase, possess, or transport a firearm.

(b) Subsequent to a judicial determination that an individual is subject to the commitment procedures in Article 5 of this Chapter, and ordered to undergo either inpatient or outpatient treatment, the individual, if over the age of 18, and upon the expiration of any current inpatient or outpatient commitment, may file a petition for an adjudication by the district court judge that the petitioner is no longer undergoing treatment or medication for a condition that resulted in commitment and is no longer a danger to himself or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C.§ 922 and G.S. 14-404 and G.S. 14-415.12.

(c) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination that either inpatient or outpatient treatment was appropriate. An individual disqualified from firearms possession due to a comparable out-of-State mental commitment shall make application in the county of residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner, the district attorney, and designated representative for the North Carolina Attorney General's office. Copies of the petition must be served on the director of the inpatient and outpatient treatment facility, in-State or out-of-State, the district attorney in the petitioner's current county of residence, and a designated representative for the North Carolina Attorney General's office.

(d) Contemporaneous with the petition, the petitioner must file an affidavit by a psychiatrist or eligible psychologist that the petitioner is no longer undergoing treatment or medication for a condition resulting in commitment and is no longer a danger to himself or others for purposes of the purchase, possession, or transfer of firearms. The burden is on the petitioner to establish by clear and convincing evidence that the petitioner's possession of firearms no longer poses a danger to himself or others. The district attorney or designated representative from the North Carolina Attorney General's office shall present any and all relevant information which may establish that the petitioner's possession of firearms would pose an undue risk of harm to the petitioner or the public. For these purposes, the district attorney or designated representative from the North Carolina Attorney General's office may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney or designated representative from the North Carolina Attorney General's office to receive any mental health records of the applicant. The proceeding shall be open to the public. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying.

(e) Upon a judicial determination that a petitioner's possession of firearms is no longer a danger to the petitioner or the public, the clerk of superior court shall forward the order to the NICS for updating of the respondent's record."

SECTION 3.(a) G.S. 14-404 is amended by adding the following new subsection to read:

"(g) The sheriff shall issue a license or permit for the purchase of a firearm under this section to an individual denied a permit under subdivision (4) of subsection (c) of

this section if the individual's rights to purchase a firearm have been restored under G.S. 122C-54.1.

SECTION 3.(b) G.S. 14-415.12(b) is amended by adding the following new subsection to read:

"(c) The sheriff shall issue a permit for the purchase or possession of a firearm under this section to an individual denied a permit under subdivision (6) of subsection (b) of this section if the individual's rights to purchase or possess a firearm have been restored under G.S. 122C-54.1."

SECTION 4. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of twenty-five thousand dollars ($25,000) for the 2008-2009 fiscal year to carry out the provisions of this act.

SECTION 5. Sections 1 through 3 of this act become effective December 1, 2008. Section 4 of this act becomes effective July 1, 2008. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 2081*
PROPOSED COMMITTEE SUBSTITUTE S2081-PCS65391-RR-50

Short Title: NICS Reporting/Restoration. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REPORTING OF INVOLUNTARY MENTAL COMMITMENT TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; AND TO PROVIDE FOR A RESTORATION PROCESS TO REMOVE THE COMMITMENT BAR TO THE PURCHASE, POSSESSION, AND TRANSFER OF FIREARMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-54 is amended by adding the following new subsection to read:

"(d1) After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of superior court in the county where the judicial determination was made shall, as soon as practicable, cause a report of the commitment to be transmitted to the National Instant Criminal Background Check System (NICS). The clerk shall also cause to be transmitted to NICS a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to criminal trial. The clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 or any applicable federal law, shall cause the individual's record in NICS to be updated. The record of involuntary commitment shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. The clerk shall effect the transmissions to NICS required by the subsection according to protocols which shall be established by the Administrative Office of the Courts."

SECTION 2. Article 3 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"**§ 122C-54.1. Restoration process to remove mental commitment bar.**

(a) Any individual over the age of 18 may petition for the removal of the mental commitment bar to purchase, possess, or transfer a firearm when the individual no

longer suffers from the condition that resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. No individual who has been found not guilty by reason of insanity may petition a court for restoration under this section.

(b) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination that either inpatient or outpatient treatment was appropriate or in the district court of the county of the petitioner's residence. An individual disqualified from firearms possession due to a comparable out-of-state mental commitment shall make application in the county of residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the district attorney. Copies of the petition must be served on the director of the inpatient and outpatient treatment facility, in-State or out-of-state, and the district attorney in the petitioner's current county of residence.

(c) The burden is on the petitioner to establish by clear and convincing evidence that the petitioner no longer suffers from the condition that resulted in commitment and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. Upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. Unless the court closes the hearing in accordance with this subsection, the proceeding shall be open to the public. Upon motion by the petitioner, the court may close the hearing to the public unless the court finds that the public interest would be better served by conducting the hearing in public. The district court shall enter an order that the petitioner does or does not continue to suffer from the condition that resulted in commitment and does or does not continue to pose a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The court shall include in its order the specific findings of fact on which it bases its decision. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a district attorney and approved by the Attorney

General. An attorney so designated shall have all the powers of the district attorney under this section.

(d) Upon a judicial determination to grant a petition under this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record."

SECTION 3.(a) G.S. 14-404 is amended by adding the following new subsection to read:

"(g) An applicant shall not be ineligible to receive a permit under subsection (4) of subsection (c) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1."

SECTION 3.(b) G.S. 14-415.12 is amended by adding the following new subsection to read:

"(c) An applicant shall not be ineligible to receive a concealed carry permit under subdivision (6) of subsection (b) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1."

SECTION 4. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of twenty-five thousand dollars ($25,000) for the 2008-2009 fiscal year to carry out the provisions of this act.

SECTION 5. Sections 1 through 3 of this act become effective December 1, 2008. Section 4 of this act becomes effective July 1, 2008. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 2081*

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

S2081-ARR-104 [v.1]

Date _____,2008

Comm. Sub. [YES]
Amends Title [NO]
S2081-CSRR-50

Senator _____

moves to amend the bill on page 2, lines 37 through 39,
by deleting the language " petitioner's possession or use of firearms does or does not continue to pose a danger to self or others."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 2081: NICS Reporting/Restoration.

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Appropriations/Base Budget	**Date:**	June 11, 2008
Introduced by:	Sen. Rand	**Summary by:**	William R. Gilkeson
Version:	PCS to First Edition S2081-CSRR-50		Committee Counsel

SUMMARY: ***This Proposed Committee Substitute for Senate Bill 2081 would require that clerks of superior court must notify the National Instant Criminal Background Check System (NICS) of any individual who:***

1. ***Is involuntarily committed for either inpatient or outpatient mental health treatment.***
2. ***Is acquitted of a crime by reason of insanity.***
3. ***Is found mentally incompetent to proceed to trial.***

The bill would provide a restoration procedure for people who have been involuntarily committed to have the mental commitment block on their purchase, possession, or transfer of firearms removed. The restoration procedure would be conducted by a District Court judge. It would not be available to a person acquitted by reason of insanity. It would also remove mental commitment disqualifications under State and federal law.

The bill would also appropriate $25,000 for 2008-09 to the Administrative Office of the Courts for implementation.

[As introduced, this bill was identical to H2747, as introduced by Reps. Glazier, Harrison, Cole, Wiley, which is currently in House Judiciary II, if favorable, Appropriations.]

CURRENT LAW:

NC gives the responsibility of issuing permits to purchase or receive weapons and of issuing permits to carry concealed weapons to the sheriff.

GS 14-404 (attached) governs permits to purchase or receive weapons. It directs the sheriff to make background checks, including through NICS, of each applicant and determine that no State or federal law prohibits issuing a permit. The sheriff is not to issue the permit unless satisfied that the applicant is of good moral character and wants the weapon for the acceptable purposes of protection, target shooting, collecting, or hunting. The sheriff is prohibited from issuing a permit to people in 8 categories, including (4) : "One who has been adjudicated mentally incompetent or committed to a mental institution."

GS 14-415.12 (attached) governs permits to carry concealed weapons. That statute directs the sheriff to make the same background checks as for a purchase permit to determine that no State or federal law prohibits issuing a permit. The sheriff is not required to determine good moral character or intent, but to satisfy himself that the applicant "does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun." The sheriff is prohibited from issuing a concealed-carry permit to people in 11 categories, including (6) "[One who is] currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision."

There is no requirement under State or federal law for the sheriff or any other NC official to report anything to NICS, although such reporting is encouraged by federal agencies.

There is no provision in State law for persons who have been committed for mental health treatment to have their categorical disqualification from firearms permits removed. Federal law, however, does have a procedure under which people who are prohibited by federal law from possessing, shipping, transporting, or receiving firearms or ammunition may apply to the Attorney General to remove the disqualification. The provision, 18 U.S.C. 925(c) (attached), says the Attorney General may remove the disqualification upon finding "that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest."

Earlier this year, Congress passed The NICS Improvement Act, which among other things provides that if a State has a restoration procedure, it can remove the federal disqualifications on a person who "has been adjudicated as a mental defective or has been committed to any mental institution" from being sold or given any firearm or ammunition, or to ship, transport, possess, or receive any firearm or ammunition in interstate commerce. (See attachments.)

BILL ANALYSIS:

Reporting to NICS. The PCS would require the clerk of Superior Court to report to NICS any individual who:

1. Is involuntarily committed for either inpatient or outpatient mental health treatment.
2. Is acquitted of a crime by reason of insanity.
3. Is found mentally incompetent to proceed to trial. ***Section 1 of the bill.***

Restoration Hearing. The PCS would also provide a restoration procedure for those who have been involuntarily committed to mental health treatment to remove the mental commitment bar to purchase, possession, or transfer firearms. This restoration procedure would not be available to a person who was acquitted of a crime by reason of insanity. The person would petition a District Court judge in the county where the commitment was done or the county where the person resides. The burden would be on the petitioner to persuade the judge by clear and convincing evidence that the person no longer suffers from the condition that resulted in commitment and no longer poses a danger to self or others with respect to purchase, possession, or transfer of firearms. The District Attorney (or, at the DA's request, someone from the Attorney General's office) would present any evidence or argument to the contrary. The petitioner would make available all criminal and mental health records. The petitioner could move that records be kept private or that the hearing be closed, and the court could grant those motions unless it found that the public interest would be better served by opening the records or the hearing. Otherwise, the records and hearing would be open. The court would be required to include in its order the specific findings on which it based its decision. The petitioner could appeal for a hearing de novo to Superior Court. If turned down by the Superior Court, the person would have to wait a year before filing another restoration petition. If the petitioner succeeded, the clerk of court would be required to report that fact to NICS. ***Section 2 of the bill.***

Effect of Restoration. If a person succeeded in a restoration proceeding, the categorical disqualification from receiving a purchase permit in GS 14-404(c)(4) because of involuntary commitment would be removed. Also, the categorical disqualification from receiving a concealed-carry permit in GS 14-415.12(b)(6) because of involuntary commitment would be removed. That does not mean, however, that a sheriff could not deny a permit on other grounds. ***Section 3 of the bill.*** The restoration proceeding would have the effect, under the federal NICS Improvement Act, of removing the mental commitment disqualification of 18 USC 922(d)(4) and 922(g)(4) from purchasing, possessing, and transfer firearms.

$25,000 Appropriation. The bill would appropriate $25,000 for 2008-09 to the Administrative Office of the Courts for implementation of the act. ***Section 4 of the bill.***

EFFECTIVE DATE: The reporting requirements and the restoration procedure would become effective December 1, 2008. The appropriation would become effective July 1, 2008. ***Section 5 of the bill.***

S2081e1-SMRR-CSRR-50

§ 14-404. Issuance or refusal of permit; appeal from refusal; grounds for refusal; sheriff's fee.

(a) Upon application, the sheriff shall issue the license or permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

(1) Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting.

(b) If the sheriff is not fully satisfied, the sheriff may, for good cause shown, decline to issue the license or permit and shall provide to the applicant within seven days of the refusal a written statement of the reason(s) for the refusal. An appeal from the refusal shall lie by way of petition to the chief judge of the district court for the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal, and shall be final.

(c) A permit may not be issued to the following persons:

(1) One who is under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade). However, a person who has been convicted of a felony in a court of any state or in a court of the United States and who is later pardoned may obtain a permit, if the purchase or receipt of a pistol or crossbow permitted in this Article does not violate a condition of the pardon.

(2) One who is a fugitive from justice.

(3) One who is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. section 802).

(4) One who has been adjudicated mentally incompetent or has been committed to any mental institution.

(5) One who is an alien illegally or unlawfully in the United States.

(6) One who has been discharged from the armed forces under dishonorable conditions.

(7) One who, having been a citizen of the United States, has renounced his or her citizenship.

(8) One who is subject to a court order that:

a. Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

b. Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner of the person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

c. Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

(d) Nothing in this Article shall apply to officers authorized by law to carry firearms if the officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms and state that the purpose for the purchase of the firearms is directly related to the law officers' official duties.

(e) The sheriff shall charge for the sheriff's services upon issuing the license or permit a fee of five dollars ($5.00).

(f) Each applicant for a license or permit shall be informed by the sheriff within 30 days of the date of the application whether the license or permit will be granted or denied and, if granted, the license or permit shall be immediately issued to the applicant.

§ 14-415.12. Criteria to qualify for the issuance of a permit.

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.

(2) The applicant is 21 years of age or older.

(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.

(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

a. The North Carolina Criminal Justice Education and Training Standards Commission,

b. The National Rifle Association, or

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

(5) The applicant is not disqualified under subsection (b) of this section.

(b) The sheriff shall deny a permit to an applicant who:

(1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.

(2) Is under indictment or against whom a finding of probable cause exists for a felony.

(3) Has been adjudicated guilty in any court of a felony.

(4) Is a fugitive from justice.

(5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.

(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.

(7) Is or has been discharged from the armed forces under conditions other than honorable.

(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), or 14-415.26(d).

(9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.

(10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.

(11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted.

18 U.S.C. § 925(c)

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of

such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

From P.L. 110-180, The NICS Improvement Act.

SEC. 105. RELIEF FROM DISABILITIES PROGRAM REQUIRED AS CONDITION FOR PARTICIPATION IN GRANT PROGRAMS.

(a) PROGRAM DESCRIBED.—A relief from disabilities program is implemented by a State in accordance with this section if the program—

(1) permits a person who, pursuant to State law, has been adjudicated as described in subsection (g)(4) of section 922 of title 18, United States Code, or has been committed to a mental institution, to apply to the State for relief from the disabilities imposed by subsections (d)(4) and (g)(4) of such section by reason of the adjudication or commitment;

(2) provides that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities referred to in paragraph (1), and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest; and

(3) permits a person whose application for the relief is denied to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial.

(b) AUTHORITY TO PROVIDE RELIEF FROM CERTAIN DISABILITIES WITH RESPECT TO FIREARMS.—If, under a State relief from disabilities program implemented in accordance with this section, an application for relief referred to in subsection (a)(1) of this section is granted with respect to an adjudication or a commitment to a mental institution or based upon a removal of a record under section 102(c)(1)(B), the adjudication or commitment, as the case may be, is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.

Sections of 18 U.S.C. 922:

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who [FN2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of

such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — June 12, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Bradley Thomas	IFNC
Barbara Moore	Conf. of Clerks of Sup. Ct.
Lorrin Freeman	CSC - Wake Co
JENNIFER CANADA	ATTORNEY GENERAL'S OFFICE
JAY CHAUDHURI	"
LISA MARES	"
John Phelps	NCLM
TOM VITAGLIANO	CFTF
Bill Rowe	NC Justice Center
Colleen Kochanek	Smith Moore
Julia Leggett	The Arc of NC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 12, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Dolly Whiteside	Judicial Branch - IDS
JD McCarty	AOC
Anthony Rouleff	NRA
Dennis Allen	NC Rifle + Pistol Assoc
Tom Young	NC Police Chiefs Assn NC Campus Law Enforcement Executives
Janice Carmichael	CCPS - Victim Compensation
Patrick Buffkin	MMRS
	Aeronautics
	Ag Gal
	AG's office

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 12, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Cassandra White	Gov. Office
Eddie Caldwell	NC Sheriffs' Assn.
Ken McLeod	CFSA-NC
Bobby Lee	CFSA - NC
Cullen Browder	WRAL

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 12, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Vicki Smith	Disability Rights NC (DRNC) 2626 Glenwood Ave, 550 Raleigh, NC 27608
Alexis Chappell	DRNC
John Rittelmeyer	DRNC
Sally Cameron	
John Tork	
Jennifer Mahan	
Ann Lee	
Randy Lewis	GRNC
E Pickens	Grass Roots North Carolina
Thomas Rhyne	Grass Roots North Carolina
John Lancaster	GRNC
	NCO

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 12, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NCBA
[illegible]	[illegible]
[illegible]	NCICU
Hope Williams	NCAE
LINDSEY DEESE	NC DOT - AGO
KRIS GOULD	NCDOT AGO
[illegible]	[illegible]
Kay Smith	NCAJC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 12, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
John Lucas	NCJ
Robin Huffman	NC Psychiatric A
[illegible]	UDAL
Tony Tetterton	JCCJ
[illegible]	[illegible]
[illegible]	NAMI NC
Mike Mason	JSL

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

June 24, 2008
10 a.m.
Room 1027

MINUTES

The Senate Judiciary I (Civil) Committee met Wednesday, June 24, 2008 in Room 1027 of the Legislative Building. Vice Chairman Dan Clodfelter presided, calling the meeting to order at 10:20 a.m.

Also in attendance with Vice Chairman Clodfelter were Chairman Martin Nesbitt, Vice Chairman Phil Berger, Senator Harry Brown, Senator Andrew Brock, Senator Pete Brunstetter, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw, Hal Pell, Research Assistant Denise Huntley and Committee Assistant Jessica Kozma Bennett

A meeting notice was sent to membership and staff July 15.

House Bill 1679

Vice Chairman Clodfelter called on Representative Jones for House Bill 1679, an act allowing joint municipal assistance agencies to make and execute contracts for periods greater than three years to achieve economy, adequacy and reliability. Vice Chairman Clodfelter told the committee that Representative Jones would speak to the bill but the bill would not be voted on during the day's meeting. Representative Jones told the committee that the bill would prove more cost efficient. Vice Chairman Clodfelter asked for comments from the audience. Hearing none, he then displaced the bill.

Senate Bill 2063
Jessica's Law

Vice Chairman Clodfelter then recognized Senator Hoyle to speak to Senate Bill 2063, an act:

> To model North Carolina's satellite based monitoring laws after the state of Florida's "Jessica's Law" imposing life-

time satellite-based monitoring of offenders who have taken indecent liberties with children, to clarify the purpose and application of the satellite based monitoring laws for sex offenders, to amend the fee charged for enrollment into the monitoring program, and to direct the state department of justice to report on any necessary changes to the state sex offender registration laws for compliance with the federal sex offender registration and notification act.

A Proposed Committee Substitute was distributed to members an adopted for discussion by a motion by Senator Kinnaird. Senator Hoyle told the committee staff and bill sponsors worked diligently on the bill and that the current PCS was similar to a bill passed three years ago. He continued that the bill is modeled after existing legislation in Florida and then asked Mr. Pell to explain the technical nature of the bill.

Vice Chairman Clodfelter asked Mr. Pell what was in the bill that the legislature had not already addressed. Mr. Pell answered that if a court finds a perpetrator over 18 and a victim under 13, the offense becomes an aggravated offense punishable by life monitoring. He then reviewed provisions of the bill.

Senator McKissick asked if there was precedent. Mr. Pell answered that there is precedent from a court of appeals case in Tennessee. Senator McKissick then expressed that he had some concern about the retroactivity of the bill. Senator Kinnaird asked of someone could retroactively recall a person to monitor, of which Mr. Pell answered they could.

Senator Hoyle then asked the committee to remember that the offenders in these cases were child molesters, and that such offenders brutalize innocent children. Wake County District Court Attorney Colin Willoughby said the he felt the bill provided protection and supported the bill.

Chairman Nesbitt moved to amend the bill on page two, lines 21 and 22. Amendment passed with one dissenting vote.

Senator Jenkins moved for favorable report, unfavorable as to original bill. Senator Tillman seconded. The motion passed unanimously. The bill is referred to the Finance Committee.

Vice Chairman Clodfelter then returned to House Bill 1679.

House Bill 1679

Senator Hoyle moved for favorable report, unfavorable as to original bill. Motion carried unanimously.

House Bill 887

Vice Chairman Clodfelter recognized Representative Wiley to speak to House Bill 887, an act to clarify and expand the criminal offense of stalking and to increase the penalty for stalking. A PCS was distributed to members and adopted for discussion through a motion by Senator Hoyle. Representative Wiley said changes were technical. Senator Brunstetter said there were some definitions that needed to be discussed. Vice

Chairman Clodfelter then displaced the bill for a future meeting. The meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Senator Dan Clodfelter, Co-Chair

Jessica Kozma Bennett
Committee Assistant

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Phil Berger, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman

Tuesday, June 24, 2008
10 a.m.
Room 1027

1 Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 887	Amend Criminal Offense of Stalking.	Representative Underhill Representative Langdon, Jr. Representative Ray Representative Wiley
HB 1113	State Tort Claims/Public Duty Doctrine.	Representative Faison Representative Glazier
HB 1679	Joint Municipal Assistance Agency Contracts.	Representative Jones
SB 1715	Procedure for Tax Class Actions.	Senator Clodfelter
SB 2063	Jessica's Law/GPS Monitoring.	Senator Hoyle

Adjournment.

H 1

HOUSE BILL 1679

Short Title:	Joint Municipal Assistance Agency Contracts.	(Public)
Sponsors:	Representatives Jones; Blue, Braxton, Bryant, Coates, Daughtridge, Farmer-Butterfield, T. Harrell, Neumann, and Ray.	
Referred to:	Judiciary II.	

April 19, 2007

A BILL TO BE ENTITLED

AN ACT ALLOWING JOINT MUNICIPAL ASSISTANCE AGENCIES TO MAKE AND EXECUTE CONTRACTS FOR PERIODS GREATER THAN THREE YEARS TO ACHIEVE ECONOMY, ADEQUACY, AND RELIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159B-44(13) reads as rewritten:

"(13) To make and execute contracts ~~for a period not exceeding three years~~ and other instruments necessary or convenient in the exercise of the powers and functions of the joint municipal assistance agency, including contracts with municipalities, joint agencies, persons, firms, corporations and others, provided, however, that such contracts shall not unreasonably preclude the municipality or joint agency from contracting with other parties in order to achieve economy, adequacy and reliability in the operation of their electric systems;".

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

HOUSE BILL 1679:
Joint Municipal Assistance Agency Contracts

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 18, 2008
Introduced by:	Rep. Jones	**Summary by:**	William R. Gilkeson
Version:	First Edition		Committee Counsel

SUMMARY: The First Edition of House Bill 1679 would allow joint municipal assistance agencies to make and execute contracts for periods of more than three years.

CURRENT LAW: A joint municipal assistance agency is a public body that has the authority to provide assistance to municipalities in the contraction, ownership, maintenance, expansion, and operation of their electric systems. G.S. 159B-44 sets forth the general powers of joint municipal agencies, including the right to make and execute contracts for a period not exceeding three years. This would include contracts with municipalities, joint agencies, persons, firms, corporations. The contract cannot unreasonably preclude the municipality or joint agency from contracting with other parties in order to achieve economy, adequacy and reliability in the operation of their electric systems.

BILL ANALYSIS: House Bill 1679 would amend the power of joint municipal assistance agencies to make and execute contracts by removing the 3-year time limit. It would not replace the 3-year limit with any other time limit.

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

Drupti Chauhan contributed substantially to this summary.

H1679e1-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 2063

Short Title:	Jessica's Law/GPS Monitoring.	(Public)
Sponsors:	Senators Hoyle; Albertson, Allran, Atwater, Berger of Rockingham, Bingham, Boseman, Brock, Dalton, Garrou, Goss, Hunt, Jacumin, Jenkins, McKissick, Preston, Purcell, Queen, Smith, Snow, Soles, Stevens, Swindell, and Tillman.	
Referred to:	Judiciary I (Civil).	

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO MODEL NORTH CAROLINA'S SATELLITE-BASED MONITORING LAWS AFTER THE STATE OF FLORIDA'S "JESSICA'S LAW" IMPOSING LIFETIME SATELLITE-BASED MONITORING ON OFFENDERS WHO HAVE TAKEN INDECENT LIBERTIES WITH CHILDREN, TO CLARIFY THE PURPOSE AND APPLICATION OF THE SATELLITE-BASED MONITORING LAWS FOR SEX OFFENDERS, TO AMEND THE FEE CHARGED FOR ENROLLMENT INTO THE MONITORING PROGRAM, AND TO DIRECT THE STATE DEPARTMENT OF JUSTICE TO REPORT ON ANY NECESSARY CHANGES TO THE STATE SEX OFFENDER REGISTRATION LAWS FOR COMPLIANCE WITH THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT.

Whereas, nine-year-old Jessica Lunsford was assaulted and murdered by a convicted sex offender in Florida; and

Whereas, the State of Florida enacted legislation designed to monitor and track persons convicted of indecent liberties against minors; and

Whereas, the State of Florida included in its legislation a provision that when persons convicted of molesting children are released from active confinement, they will be monitored and tracked to help ensure the safety of the public; and

Whereas, the monitoring included the use of the latest technology available, designed to use satellites to verify the location of persons convicted of serious and violent sex offenses; and

Whereas, this State should also utilize the latest technology in monitoring persons who have been convicted in this State of serious and violent sexual assaults against minors or who have moved into this State after committing these types of offenses against minors in other states; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.1 reads as rewritten:

"**§ 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.

(c) When an offender is convicted of an offense under this section, during the sentencing phase, the district attorney shall present to the court any evidence that the defendant is 18 years of age or older and that the defendant, during the offense,

(1) Intentionally touched, in a lewd or lascivious manner, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of the victim, a person less than 13 years of age at the time of the offense, or

(2) Forced or enticed the victim, a person under 13 years of age, to so touch the perpetrator in the manner and places described in subdivision (1) of this subsection.

The district attorney shall have no discretion to withhold any evidence required to be presented to the court pursuant to this subsection. The court, after hearing any evidence presented by the parties, shall make findings on whether the circumstances described in subdivision (1) or (2) of this subsection occurred in the case.

(d) If the court makes findings under subsection (c) of this section, then the judge shall indicate on the form reflecting the judgment that the offense qualifies as a G.S. 14-202.1(c) offense. The clerk of court shall ensure that the official record of the defendant's conviction includes the court's determination so that any inquiry into the defendant's criminal record will reflect that the offense involved indecent liberties against a child under 13 years of age."

SECTION 2. G.S. 14-208.5 reads as rewritten:

"**§ 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.

The enactment of the sex offender monitoring program in Part 5 of this Article is designed to utilize the latest technological solutions to monitor and track serious and violent sex offenders. The use of a continuous satellite-based monitoring system will provide this State with a more efficient and accurate method of monitoring these serious and predatory criminals. United States Department of Justice statistics reveal that, compared to non-sex offenders released from State prisons, released sex offenders were four times more likely to be rearrested for a sex crime. Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community.

Technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders once they have completed active sentences. These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly updated geographic location of supervised serious offenders and violent sexual offenders following their release, with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations. Continuous 24 hours a day, seven (7) days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are required by law to register as sex offenders.

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. It is also the purpose of this Article to ensure, through the use of available technology, that there is improved supervision and behavioral control of offenders who have been convicted of serious and violent offenses."

SECTION 3. G.S. 14-208.6(1a) reads as rewritten:

"§ 14-208.6. Definitions.

The following definitions apply in this Article:

(1a) "Aggravated offense" means

a. ~~any~~ Any criminal offense that includes either of the following: 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.~~13 years old.

b. A conviction under G.S. 14-202.1, where the court found that the factual circumstances of the offense met the requirements under G.S. 14-201.1(c)(1) or (c)(2)."

SECTION 4. G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. Establishment of program; creation of guidelines; ~~duties.~~duties; application.**

(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~~has been 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~~ has been 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) based on the Department's risk assessment program 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.

(e) Application. Notwithstanding any other provision of law, the satellite-based monitoring program and requirements, as provided in G.S. 14-208.40, and throughout

this Part of Article 27A of the General Statutes, are retroactive and apply to the following persons, regardless of the date of their offense or conviction:

(1) Any person released from prison by parole or post-release supervision on or after August 16, 2006.

(2) Any person sentenced to intermediate punishment on or after August 16, 2006.

(3) Any person who completed his or her sentence on or after August 16, 2006, who is not on post-release supervision or parole."

SECTION 5. G.S. 14-208.40B(a) reads as rewritten:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender ~~is convicted of~~ has a conviction for an offense that is a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, because the court did not make an enrollment determination at the time of sentencing as provided in G.S. 14-208.40A, or the sentencing occurred prior to the effective date of G.S. 14-208.40A, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a)."

SECTION 6. G.S. 14-208.45 reads as rewritten:

"**§ 14-208.45. Fees.**

(a) Except as provided in subsections (b) and (b1) of this section, each person required to enroll pursuant to this Part shall pay a one-time fee of ~~ninety dollars ($90.00).~~ ninety-five dollars ($95.00). The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction. 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) When a court determines a person is required to enroll pursuant to G.S. 14-208.40A or G.S. 14-208.40B, the court may exempt a person from paying the fee required by subsection (a) of this section only for good cause and upon motion of the person required to enroll in 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.

(c) When a person is required to enroll based on a determination by the Department pursuant to G.S. 14-208.40B, the Department shall have the authority to exempt the person from paying the fee only for good cause and upon request of the person required to enroll in satellite-based monitoring. The Department 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."

SECTION 7. The Department of Justice shall study the guidelines issued by the U.S. Attorney for the federal Sex Offender Registration and Notification Act (SORNA) to determine whether North Carolina is in compliance with those guidelines. The Department of Justice shall identify any areas in which the State fails to comply with SORNA and the action required for compliance. The Attorney General, or his

designee, shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, regarding the status of the State's compliance with SORNA and recommend any actions or State legislation that may be required to satisfy the SORNA guidelines.

SECTION 8. This act is effective when it becomes law.

PROPOSED COMMITTEE SUBSTITUTE S2063-PCS85474-RKf-74

A BILL TO BE ENTITLED

AN ACT TO MODEL NORTH CAROLINA'S SATELLITE-BASED MONITORING LAWS AFTER THE STATE OF FLORIDA'S "JESSICA'S LAW" IMPOSING LIFETIME SATELLITE-BASED MONITORING ON OFFENDERS WHO HAVE TAKEN INDECENT LIBERTIES WITH CHILDREN, TO MAKE IT UNLAWFUL TO TAMPER WITH A DEVICE, TO CLARIFY THE PURPOSE AND APPLICATION OF THE SATELLITE-BASED MONITORING LAWS FOR SEX OFFENDERS, TO AMEND THE FEE CHARGED FOR ENROLLMENT INTO THE MONITORING PROGRAM, AND TO DIRECT THE STATE DEPARTMENT OF JUSTICE TO REPORT ON ANY NECESSARY CHANGES TO THE STATE SEX OFFENDER REGISTRATION LAWS FOR COMPLIANCE WITH THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT.

Whereas, nine-year-old Jessica Lunsford was assaulted and murdered by a convicted sex offender in Florida; and

Whereas, the State of Florida enacted legislation designed to monitor and track persons convicted of indecent liberties against minors; and

Whereas, the State of Florida included in its legislation a provision that when persons convicted of molesting children are released from active confinement, they will be monitored and tracked to help ensure the safety of the public; and

Whereas, the monitoring included the use of the latest technology available, designed to use satellites to verify the location of persons convicted of serious and violent sex offenses; and

Whereas, this State should also utilize the latest technology in monitoring persons who have been convicted in this State of serious and violent sexual assaults against minors or who have moved into this State after committing these types of offenses against minors in other states; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.1 reads as rewritten:

"**§ 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.

(c) When an offender is convicted of an offense under this section, during the sentencing phase, the district attorney shall present to the court any evidence that the defendant is 18 years of age or older and that the defendant, during the offense,

(1) Intentionally touched, in a lewd or lascivious manner, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of the victim, a person less than 13 years of age at the time of the offense, or

(2) Forced or enticed the victim, a person under 13 years of age, to so touch the perpetrator in the manner and places described in subdivision (1) of this subsection.

The district attorney shall have no discretion to withhold any evidence required to be presented to the court pursuant to this subsection. The court, after hearing any evidence presented by the parties, shall make findings on whether the circumstances described in subdivision (1) or (2) of this subsection occurred in the case.

(d) If the court makes findings under subsection (c) of this section, then the judge shall indicate on the form reflecting the judgment that the offense qualifies as a G.S. 14-202.1(c) offense. The clerk of court shall ensure that the official record of the defendant's conviction includes the court's determination so that any inquiry into the defendant's criminal record will reflect that the offense involved an act or acts described in subsection (c) of this section by an adult against a child under 13 years of age."

SECTION 2. G.S. 14-208.5 reads as rewritten:

"**§ 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.

The enactment of the sex offender monitoring program in Part 5 of this Article is designed to utilize the latest technological solutions to monitor and track serious and violent sex offenders. The use of a continuous satellite-based monitoring system will provide this State with a more efficient and accurate method of monitoring these serious and predatory criminals. United States Department of Justice statistics reveal that, compared to non-sex offenders released from State prisons, released sex offenders were four times more likely to be rearrested for a sex crime. Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community.

Technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders once they have completed active sentences. These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly updated geographic location of supervised serious offenders and violent sexual offenders following their release, with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations. Continuous 24 hours a day, seven days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are required by law to register as sex offenders. The satellite-based monitoring program is civil and not punitive in nature, and is primarily designed as a means of assuring, as much as possible, public protection.

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. It is also the purpose of this Article to ensure, through the use of available technology, that there is improved supervision and behavioral control of offenders who have been convicted of serious and violent offenses."

SECTION 3. G.S. 14-208.6(1a) reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "Aggravated offense" means

a. ~~any~~ Any criminal offense that includes either of the following: 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.~~13 years old.

b. A conviction under G.S. 14-202.1, where a court finds, under either G.S. 14-208.40A or G.S. 14-208.40B, that the factual circumstances of the offense meet the requirements under G.S. 14-202.1(c)(1) or (c)(2)."

SECTION 4. G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. Establishment of program; creation of guidelines; ~~duties.~~duties; application.**

(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~~ has been 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~~ has been 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) based on the Department's risk assessment program requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program.

(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.

(e) Application. – Notwithstanding any other provision of law, the satellite-based monitoring program and requirements, as provided in this section, and throughout this Part of Article 27A of the General Statutes, are retroactive and apply to the following persons, regardless of the date of their offense or conviction:

(1) Any person sentenced to intermediate punishment on or after August 16, 2006.

(2) Any person released from prison by parole or post-release supervision on or after August 16, 2006.

(3) Any person who completed his or her sentence on or after August 16, 2006, who is not on post-release supervision or parole."

SECTION 5. G.S. 14-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved ~~the physical, mental, or sexual abuse of~~ a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a) or not, and ~~if so,~~ shall make a finding of fact of that ~~determination,~~ determination. The court shall specify ~~specifying~~ whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved ~~the physical, mental, or sexual abuse of~~ a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, or has committed an aggravated offense, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved ~~the physical, mental, or sexual abuse of~~ a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program. If so, ~~the court determines that the offender does require the highest possible level of supervision and monitoring,~~ the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 6. G.S. 14-208.40B reads as rewritten:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender ~~is convicted of~~ has a conviction for an offense that is a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, because the court did not make an enrollment determination at the time of sentencing as provided by law, or the sentencing occurred prior to the effective date of any law providing for an enrollment determination at time of sentencing, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Department, ~~Department~~ shall schedule a hearing in ~~the~~ superior court ~~of~~ for the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, or (iii) the conviction offense was an aggravated offense, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved ~~the physical, mental, or sexual abuse of~~ a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program. If so, the court ~~determines that the offender does require the highest possible level of supervision and monitoring, the court~~ shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court. (2007-213, s. 3; 2007-484, s. 42(b))."

SECTION 7. G.S. 14-208.45 reads as rewritten:

"**§ 14-208.45. Fees.**

(a) Except as provided in subsections (b) and (b1) of this section, each person required to enroll pursuant to this Part shall pay a one-time fee of ~~ninety dollars~~

~~($90.00).~~ ninety-five dollars ($95.00). The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction. 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) When a court determines a person is required to enroll pursuant to G.S. 14-208.40A or G.S. 14-208.40B, the court may exempt a person from paying the fee required by subsection (a) of this section only for good cause and upon motion of the person required to enroll in 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.

(c) When a person is required to enroll based on a determination by the Department pursuant to G.S. 14-208.40B, the Department shall have the authority to exempt the person from paying the fee only for good cause and upon request of the person required to enroll in satellite-based monitoring. The Department 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."

SECTION 8. Article 30 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-221.3. Removing, tampering, or interfering with device; penalty.**

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who knowingly and without lawful authority removes, tampers with, or interferes with the operation of any device that (i) had been ordered by a court to be placed upon the person as a result of a criminal trial, proceeding, or other hearing, or (ii) had been placed upon the person as a condition of probation, parole, or by court-delegated authority, shall be guilty of a Class A1 misdemeanor."

SECTION 9. The Department of Justice shall study the guidelines issued by the U.S. Attorney for the federal Sex Offender Registration and Notification Act (SORNA) to determine whether North Carolina is in compliance with those guidelines. The Department of Justice shall identify any areas in which the State fails to comply with SORNA and the action required for compliance. The Attorney General, or his designee, shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, regarding the status of the State's compliance with SORNA and recommend any actions or State legislation that may be required to satisfy the SORNA guidelines.

SECTION 10. 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.

SECTION 11. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 12. The new provisions set forth in Section 1, G.S. 14-202.1(c), and G.S. 14-202.1(d) are effective for sentencing hearings commencing on or after December 1, 2008. On or after December 1, 2008, pursuant to G.S. 14-208.40B and the

retroactivity provisions in Section 4 of this act, persons who were sentenced for violating G.S. 14-202.1 prior to December 1, 2008, are subject to a hearing to determine if the offense qualifies as an aggravated offense. Section 8 of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 2063:
Jessica's Law/GPS Monitoring

BILL ANALYSIS

Committee:	Senate Ref to Judiciary I (Civil). If fav, re-ref to Finance	**Date:**	June 23, 2008
Introduced by:	Sen. Hoyle	**Summary by:**	Hal Pell
Version:	First Edition PCS		Committee Co-Counsel

SUMMARY: ***This act imposes lifetime satellite-based monitoring on adults who molest children under 13 years of age, creates a new offense of tampering with a device, makes technical corrections to the satellite-based monitoring statutes, and increases the fee for persons required to enroll in the monitoring program. The bill also directs the Department of Justice to study federal guidelines for compliance with the Sex Offender Registration and Notification Act (SORNA), and to report and make recommendations by December 1, 2008.***

BILL ANALYSIS:

Section 1: Amends the Indecent Liberties statute to require the District Attorney to present evidence that the perpetrator was over 18, the victim was under 13, and that acts constitution sexual molestation occurred. The court's findings would be included in the record of the case.

Section 2: Amends the statute setting forth the purpose of the sex offender registry statutes to include the satellite-based monitoring program. Generally, provisions deemed to be related to the purposes of the criminal law that have retroactive application are unconstitutional. Courts have upheld programs that are "civil" in nature, and designed to provide information to authorities that is related to public safety and information.

Section 3: Makes conforming changes to include the sexual molestation of a child as an "aggravated" offense (lifetime monitoring).

Section 4: Clarifies that the satellite-based monitoring program is retroactive, and applies to the category of offenders set forth in S.L. 2006-247. Makes technical changes to statutory language.

Section 5: Makes a technical correction to provide that a reportable offense "involving a minor" requires a risk assessment. A reportable conviction is either an "offense against a minor" (kidnapping, abduction of children, restraint) or a "sexually violent offense." The amendment allows for a conditional risk assessment and judicial determination on whether monitoring is necessary on a factual showing that the offense involved a minor. Also clarifies that (i) the district attorney represents the Department of Correction and schedules hearings, (ii) the court is to make findings if a determination is made that the offender does not fit into a designated category, and (iii) the court's finding for enrollment is based upon the risk assessment.

Section 6: Makes technical corrections to reflect retroactivity. Clarifies that the district attorney, representing the Department of Correction, schedules hearings in the superior court.

Section 7: Increases the one-time enrollment fee for the program from $90 to $95.

Section 8: Makes it a Class A1 misdemeanor for a person to remove, tamper, or interfere with any device placed on the person by the courts, or Department of Correction. Currently, it is a Class E felony to tamper, interfere with, or remove a device issued pursuant to the satellite-based monitoring

program in the sex offender statutes. There is no criminal offense for damaging or interfering with electronic monitoring devices used in other situations (e.g., house arrest).

Section 9: Provides that the Department of Justice study the guidelines issued by the U.S. Attorney for compliance with the Sex Offender Registration and Notification Act (SORNA). The bill requires that the Attorney General report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee regarding the State's compliance, and any recommended legislation, no later than December 1, 2008.

Section 10: Prosecutions already begun prior to the effective dates are not abated.

Section 11: Severability clause; any provision held invalid does not result in others being invalid.

Section 12: The sentencing proceedings in Section 1 apply to sentencing hearings commencing on or after December 1, 2008; however, persons convicted and sentenced prior to that date are subject to hearings under G.S. 14-208.40B. The tampering offense is effective for offenses occurring on or after December 1, 2008, and the remaining provisions are applicable when they become law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 887

Committee Substitute Favorable 5/22/07

Short Title: Amend Criminal Offense of Stalking. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CRIMINAL OFFENSE OF STALKING AND TO INCREASE THE PENALTY FOR STALKING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-277.3 reads as rewritten:

"**§ 14-277.3. Stalking.**

~~(a) Offense. A person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence of, or otherwise harasses, another person without legal purpose and with the intent to do any of the following:~~

~~(1) Place that person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.~~

~~(2) Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.~~

~~(b) Classification. A violation of this section is a Class A1 misdemeanor. A person convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior by that person is guilty of a Class H felony. A person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.~~

~~(c) Definition. For the purposes of this section, the term "harasses" or "harassment" means knowing conduct, including written or printed communication or transmission, telephone or cellular or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions, directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.~~

(a) Legislative Intent. – The General Assembly finds that stalking is a serious problem in this State and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time.

The General Assembly recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The General Assembly recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

(b) Definitions. – The following definitions apply in this section:

(1) Course of conduct. – Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(2) Emotional distress. – Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(3) Harasses or harassment. – Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions, directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

(4) Reasonable person. – A reasonable person in the victim's circumstances.

(c) Offense. – A defendant is guilty of stalking if the defendant willfully harasses another person without legal purpose, or willfully engages in a course of conduct directed at a specific person and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

(d) Classification. – A violation of this section is a Class A1 misdemeanor. A defendant convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking when there is a court order in effect prohibiting similar behavior by that defendant is guilty of a Class G felony.

(e) Jurisdiction. – If any act that is part of the defendant's course of conduct was initiated in or had an effect on the victim in this State, the defendant may be prosecuted in this State."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 887

Committee Substitute Favorable 5/22/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H887-CSRK-71 [v.3]

6/18/2008 11:34:43 AM

Short Title: Amend Criminal Offense of Stalking. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CRIMINAL OFFENSE OF STALKING AND TO INCREASE THE PENALTY FOR STALKING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-277.3 is repealed.

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ G.S. 14-277.3A Stalking.**

(a) Legislative Intent. – The General Assembly finds that stalking is a serious problem in this State and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time.

The General Assembly recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The General Assembly recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

(b) Definitions. – The following definitions apply in this section:

(1) Course of conduct. – Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties,

by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(2) Harasses or harassment. – Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions, directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

(3) Reasonable person. – A reasonable person in the victim's circumstances.

(4) Substantial emotional distress. – Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) Offense. – A defendant is guilty of stalking if the defendant willfully harasses another person without legal purpose, or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

(d) Classification. – A violation of this section is a Class A1 misdemeanor. A defendant convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking when there is a court order in effect prohibiting similar behavior by that defendant is guilty of a Class G felony.

(e) Jurisdiction. – Pursuant to G.S. 15A-134, if any part of the offense occurred within North Carolina, including the defendant's course of conduct or the effect on the victim, then the defendant may be prosecuted in this State."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 887:
Amend Criminal Offense of Stalking

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 23, 2008
Introduced by:	Reps. Wiley, Langdon, Ray, Underhill	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H887-CSRK		Committee Co-Counsel

SUMMARY: House Bill 887 rewrites the law that defines the criminal offense of stalking, to include a course of conduct of two or more acts in which the offender follows, monitors, observes, surveils, threatens, communicates to or about a person, or interferes with a person's property. The bill would increase the penalty for stalking when a court order is in effect, making it a Class G felony. Otherwise, the penalty would remain the same as under current law. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

CURRENT LAW:

- Under G.S. 14-277.3, the offense of stalking is committed if a person willfully and repeatedly follows or harasses another person with the intent to place that person in fear of his or her safety or cause that person to suffer emotional distress.
- "Harassment" is defined as conduct directed at a specific person that torments, terrorizes, or terrifies that person and serves no legitimate purpose.
- Violation is generally a Class A1 misdemeanor, and a defendant who is sentenced to a community punishment must be placed on supervised probation in addition to any other punishment imposed by the court. However, if the offense is committed in violation of a court order prohibiting similar conduct, violation is a Class H felony. A person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

[Note: See reverse for a comparison of current law and this act].

BILL ANALYSIS:

House Bill 887 redefines the criminal offense of stalking, and increases the penalty from a Class H felony to a Class G felony when a court order is in effect prohibiting similar behavior. Assuming there are no prior offenses, the presumptive minimum sentence for a Class G felony is 10-13 months intermediate or active punishment. The bill would become effective December 1, 2008 and would apply to offenses committed on or after that date.

PCS:

- Repeals current law, instead of using same section number for a revised criminal offense.
- Includes the term "without legal purpose" that was omitted in the definition of the offense.
- Includes "Pursuant to 15A-134" in subsection (e), clarifying that current law already provides jurisdiction. Absent this inclusion, might reflect that special provision required for jurisdiction.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Prosecutions under the current law are not abated by this act.

CURRENT LAW	HB 887
Willfully on more than one occasion follows or is in the presence of, or otherwise ***harasses***, another person without legal purpose. Defines harassment as knowing conduct, including ***written communication, telephone, fax, e-mail, etc. that is directed at a specific person*** and torments, terrorizes, or terrifies that person and serves no legitimate purpose.	***Willfully harasses*** another person without legal purpose, or ***willfully engages in a course of conduct directed at a specific person.*** Defines course of conduct as ***2 or more acts, in which the offender is in the presence of***, or ***follows***, ***monitors***, ***observes***, ***surveils***, ***threatens, or communicates to or about the person***, or ***interferes with a person's property.***
Requires that defendant have the intent to (1) place the person in reasonable fear for the person's safety or the safety of the person's immediate family or close personal associates, or (2) cause the person emotional distress by placing the person in fear of death, bodily injury or continued harassment	***Substitutes specific intent requirement*** with ***a "reasonable person" standard***; retaining current language regarding the victim's fear for safety and the victim's emotional distress by being in fear of death, bodily injury or continued harassment
General: ***Class A1 misdemeanor*** Court order in effect: ***Class H felony*** Previous Stalking Offense: ***Class F felony***	Increases penalty when court order in effect to ***Class G felony;*** otherwise, penalty is the same as under current law.

Summary contribution and comparison chart by Brenda Carter, Staff Attorney.

H0887e2-SMRK-CSRK

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Mark Davis	NC DOJ
John Phelps	NCLM
Natalia N. Pearson-Farrer	NC DOA
Gretchen Azcock	NC DOA
ROBERT M. ZIMMERS	NC DOA
Chris Cathwell	DuPont
DANIEL BAUM	KENNEDY COVINGTON

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Karen Johnson	Electricities
Estherine Davis	"
Cameron Hanley	"
John McKay	COG OSBM
Sarah Preston	ACLU-NC
Sarah Becker	NCCASA
Shanah Black	NCCASA
Matt Osborne	AOC
Hannah Rowland	DCC
Robertlee Guy	DCC/DOC
[illegible]	JD, AL, PA

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Gene Ainsworth	A & A
Mark Carson	ATT
Ola Willoughby	DA - 10 Dist.
Laura Parker	DAs Conference
Peg Dowe	Conference of DAs
Lao Russell	CJR

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Jami Fitzgerald	NC Family Policy Council
John Morris	NC Family Policy Council
[illegible]	Poyner & Spruill
[illegible]	JPASSOC-
Patrick Buffkin	NMRS
Leslie Arnold	SOG - Daily Bulletin
TROY D. PAGE	AOC
John Madler	NC Sentencing Commission
Henry Hutaff	N.C. B.A.
[illegible]	PBV
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

June 26, 2008
After session
Room 1027

MINUTES

The Senate Judiciary I (Civil) Committee met Wednesday, June 26, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the after session meeting to order at 10:10 p.m.

Also in attendance with Chairman Nesbitt were Vice Chairman Dan Clodfelter, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator David Hoyle, Senator Clark Jenkins, Senator Eleanor Kinnaird, Senator Vernon Malone, Senator Floyd McKissick, Senator Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McCraw, Hal Pell, Research Assistant Denise Huntley and Committee Assistant Jessica Kozma Bennett

A meeting notice was sent to membership and staff June 25.

House Bill 1113

Chairman Nesbitt announced that House Bill 1113 would be displaced off the day's agenda.

House Bill 1284

Chairman Nesbitt recognized Representative Paul Stam to speak to House Bill 1284, a bill setting new standards for complaints in public construction projects. A proposed committee substitute was distributed to members and adopted for discussion by a motion from Senator Hoyle and unanimous vote. Chairman Nesbitt recognized Ms. McGraw to explain changes to the bill.

Ms. McCraw explained that a current statutory three year window for claims has been revised as a two year window. Vice Chairman Clodfelter was recognized, and asked to what extent the law would reach. Andrew Romanet with the League of Municipalities was recognized by Chairman Nesbitt. He answered that an answer currently was unknown and that the issue was complex. Vice Chairman Clodfelter then asked Chairman Nesbitt to recognize Jim Blackburn with the Association of County Commissioners. Chairman Nesbitt did, and Mr. Blackburn said he felt at a loss, adding that public policy should apply to more than local governments. Chairman Nesbitt asked Representative

Stam if he wanted to displace the bill for further work on the bill, of which Representative Stam agreed.

Senate Bill 1715

Senator Clodfelter was recognized by Chairman Nesbitt to speak to Senate Bill 1715, a bill revising procedures for tax class actions. A Proposed Committee Substitute was distributed to members and adopted for discussion by a motion by Senator Clodfelter.

Senator Clodfelter began saying that if the bill had been statutory ten years earlier the State would have saved an estimated $500 million in litigious fees and other costs, and that current rulings on tax class action suits have been inconsistent in state courts.

Reviewing details of the bill, Senator Clodfelter said that a suit would only be a class action suit if it challenged the State constitution. He added that claims in future cases would be handled by a class representative. An amendment to change the effect date was offered by Senator Brunstetter, and passed unanimously.

A second motion to adopt a new PCS was offered by Senator Clodfelter. The motion passed.

House Bill 887

Chairman Nesbitt recognized Representative Wiley to discuss House Bill 887, a bill amending the criminal offense of stalking. A Proposed Committee Substitute was distributed to members and passed through a motion by Senator Tillman. Mr. Pell reviewed the bill.

As Mr. Pell reviewed changes to the bill, Chairman Nesbitt asked the differences between a F and a G felony. Mr. Pell replied that F felonies are classified with physical harm and an H felony is lesser. Chairman Nesbitt commented on the importance of this legislation.

Senator Tillman complimented the bill and moved for favorable report. After some discussion Senator Kinnaird offered to amend the bill by increasing the felonious penalty class from a G to an F class offense. Senator Tillman then moved for adopted of a new PCS with the amendment rolled into it for favorable report. The motion passed unanimously.

The meeting adjourned at 11:00 p.m.

Respectfully submitted,

Martin Nesbitt

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1284

Committee Substitute Favorable 4/26/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1284-CSTC-65 [v.1]

6/23/2008 10:15:25 AM

Short Title: Breach/Construction Contract Accrual Date. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CAUSE OF ACTION AGAINST A LOCAL GOVERNMENT ARISING OUT OF A CONTRACT TO IMPROVE REAL PROPERTY OTHERWISE BARRED BY THE STATUTE OF LIMITATIONS MAY BE COMMENCED NO LATER THAN NINETY DAYS AFTER SUBSTANTIAL COMPLETION OF THE CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-53(1) reads as rewritten:

"**§ 1-53. Two years.**

Within two years –

(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. Unless otherwise provided by law, if the preceding sentence of this subsection would bar commencement of a cause of action arising out of a contract to improve real property: (i) such an action may be brought no later than ninety days after substantial completion, provided notice of the claim has been given if required by contract, or (ii) if prior to substantial completion the contract was terminated by either party, such an action may be brought no later than ninety days after the date of termination of the contract. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50(a)(5)c. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article."

SECTION 2. This act is effective when it becomes law, applies to actions filed on or after that date, and does not revive claims previously barred under G.S. 1-53(1).

HOUSE BILL 1284:
Breach/Construction Contract Accrual Date

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 26, 2008
Introduced by:	Rep. Stam	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to Second Edition H1284-CSTC-65[v1]		

SUMMARY: ***The PCS for House Bill 1284 would provide the following exception to the existing statute of limitations for contracts to improve real property against local governments under G.S. 1-53: if the applicable statute of limitations had run and would bar commencement of an action, the action could be brought no later than 1) ninety days after substantial completion of the improvement, or 2) if the contract was terminated prior to substantial completion, no later than ninety days after termination.***

The revised PCS makes the following changes:

- ***Removes all references to G.S. 1-52.***

CURRENT LAW: The relevant sections are set out in full at the end of the summary.

G.S. 1-15(a) provides that civil actions can only be commenced within periods prescribed in the Civil Procedure chapter after the cause of action has accrued, unless a statute specifically prescribes a different limitation. Case law has held that causes of action for both breach of contract and breach of warranty accrue on the date of the breach. Kaleel Builders, Inc. v. Ashby, 161 N.C.App. 34, 43-44, 587 S.E.2d 470, 477 (2003).

G.S. 1-53(1) provides for a two-year statute of limitations for actions against a local unit of government upon a contract, obligation, or liability arising out of a contract, express or implied.

G.S. 1-50(5) creates a statute of repose of six years for actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property, running from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement. "Substantial completion" is defined in G.S. 1-50(c)(5)(c) as the "degree of completion of a project, improvement or specified area or portion therefore (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it is intended. The date of substantial completion may be established by written agreement."

BILL ANALYSIS: The PCS to House Bill 1284 would amend G.S. 1-53(1) to provide that, unless otherwise provided by law, if the two year statute of limitation would bar commencement of a cause of action against a local unit of government arising out of a contract to improve real property, such an action may be brought:

1) no later than ninety days after substantial completion, or

2) if the contract is terminated prior to substantial completion, no later than ninety days after termination of the contract.

The term "substantial completion" as used in the subsection would have the same meaning as in G.S. 1-50.

EFFECTIVE DATE: This bill would become effective when it becomes law and would apply to actions filed on or after that date. It would not revive claims previously barred under G.S. 1-53(1).

BACKGROUND: In ABL Plumbing v. Bladen County Board of Education, 175 N.C. App. 164 (2005), the N.C. Court of Appeals held that a cause of action for breach of contracts accrues as soon as the injury becomes apparent to the claimant or should reasonably become apparent. The Court of Appeals found that the statute of limitations barred an action against the Bladen Board of Education for breach of contract and breach of warranty filed more than two years after the contract was breached and the plaintiff was aware of the breach. Plaintiff suggested that a new rule applicable to actions on construction contracts be adopted, providing that a cause of

action would not accrue until substantial completion of performance. Plaintiff based this argument on policy grounds, including that such a change would encourage completion of construction contracts, avoid abandonment and litigation, and encourage nonjudical resolution of controversies. The Court of Appeals stated that such arguments were better addressed to the legislature and declined to adopt the new rule.

Relevant Statutes

§ 1-15. Statute runs from accrual of action.

(a) Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute.

§ 1-53. Two years.

Within two years –

(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article.

§ 1-50. Six years.

(a) Within six years an action –

(5) a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;

2. Actions to recover damages for the negligent construction or repair of an improvement to real property;

3. Actions to recover damages for personal injury, death or damage to property;

4. Actions to recover damages for economic or monetary loss;

5. Actions in contract or in tort or otherwise;

6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;

7. Actions against a surety or guarantor of a defendant described in this subdivision;

8. Actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;

9. Actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, "substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

H1284e2-SMTC-CSTC

SENATE BILL 1715:
Procedure for Tax Class Actions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 24, 2008
Introduced by:	Sen. Clodfelter	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S1715-CSSV-73		Staff Attorney

SUMMARY: The PCS for Senate Bill 1715 establishes a procedure for taxpayers seeking to initiate or join a class action in order to obtain a refund of tax paid due to an alleged unconstitutional statute. The introduced bill was a recommendation of the Revenue Laws Study Committee.

CURRENT LAW: There are three federal forums in which to seek a refund of federal tax paid. Of these, two permit class actions, but each taxpayer in the class must have filed a claim for refund. For all practical purposes, they are rare.

The current State law regarding tax class actions is a complex amalgamation of conflicting common law legal principles, statutes, and judicial interpretation. The intersection of these principles and laws provides little guidance to the Department, taxpayers, or practitioners as to the proper procedure for seeking the refund of an unconstitutional tax.

Prior to the enactment of SB 242 (S.L. 2007-491) in 2007, the "protest statute" (former G.S. 105-267) was the relevant statute for class action purposes. For over 80 years, it provided the authority for and the procedural mechanism by which taxpayers could bring a lawsuit challenging the legality of a tax. This statute required a taxpayer to follow three requirements:

- Pay the tax.
- File a claim for a refund.
- Wait 90 days before filing suit.

The protest statute did not expressly allow for class actions, but the North Carolina courts have allowed tax class actions on several occasions. In a number of other states, courts have held that sovereign immunity bars a class action suit for a refund of tax unless it is specifically authorized by statute. The protest statute was repealed by SB 242. However, that statute is still relevant to understanding the current law because it is the centerpiece of State judicial opinions in this area.

Until 1998, the law in North Carolina was well-settled with regard to the protest statute. North Carolina courts had consistently upheld the application of the three requirements in that statute as a procedural bar to relief if the requirements had not been met. In the *Bailey I* case, a group of State and local employees filed suit alleging impairment of contract as the result of legislative changes made to the taxation of retiree income. None of the plaintiffs had filed a claim for refund. The North Carolina Supreme Court upheld the dismissal of the case for failure to comply with the procedural requirements of G.S. 105-267, the protest statute. The *Swanson* case involved a similar issue. In that case, the plaintiffs filed a "class demand letter" attempting to have one claim for refund stand for all claims. The North Carolina Supreme Court upheld the dismissal of the case.

After the decision in *Bailey I*, the plaintiffs refiled their case and, this time, all of the plaintiffs had individually complied with the protest requirement by filing a claim for refund. The Court reversed itself. In *Bailey II*, the Court found that not only were the plaintiffs, who had filed a claim for refund entitled to a refund, but all those who had not filed a claim for refund were entitled to a refund as well.

commenced, whether or not the taxpayer actually filed a claim for refund as of that date. An eligible class member who is not a class representative and who indicates a desire to be included in the class in accordance with the procedure approved by the court under subsection (c) of this section is not required to follow the procedures in G.S. 105-241.11 through G.S. 105-241.17 for the administrative and judicial review of a request for refund or a proposed denial of a request for refund.

(c) Procedure. – To become a member of a class action brought under this section, an eligible taxpayer must affirmatively indicate a desire to be included in the class in response to a notice of the class action. If the court so orders, the Department must provide to a class representative a list of names and last known addresses of all taxpayers who are readily determinable by the Department and who are eligible to become a member of the class. The court must approve the content of a notice of a class action, the method for distributing the notice, and the procedure by which an eligible taxpayer affirmatively indicates a desire to be included in the class. The class representative must advance the costs of notifying eligible taxpayers of the class action.

(d) Statute of Limitations. – The statute of limitations for filing a claim for refund of tax paid due to an alleged unconstitutional statute is tolled for a taxpayer who could timely file a claim for refund on the date a class action is commenced under this section. The statute of limitations is tolled for the limited purpose of allowing a taxpayer to become a member of the class. The tolling of the statute of limitations ends for a specific eligible taxpayer when the taxpayer does not affirmatively indicate a desire to be included in the class within the time and in accordance with the procedure approved by the court under subsection (c) of this section. The tolling of the statute of limitation ends for all taxpayers when a court enters any of the following in a class action:

(1) A final order denying certification of the class.

(2) A final order decertifying the class.

(3) A final order dismissing the class action without an adjudication on the merits.

(4) A final judgment on the merits.

(e) No Benefit. – No benefit may accrue to an eligible taxpayer who does not affirmatively indicate a desire to be included in the class within the time and in accordance with the procedure approved by the court under subsection (c) of this section."

SECTION 3. G.S. 105-241.19 reads as rewritten:

"**§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.**

The remedies in G.S. 105-241.11 through G.S. ~~105-241.17~~ 105-241.18 set out the exclusive remedies for disputing the denial of a requested refund, a taxpayer's liability for a tax, or the constitutionality of a tax statute. Any other action is barred. Neither an action for declaratory judgment, an action for an injunction to prevent the collection of a tax, nor any other action is allowed."

SECTION 4. This act is effective when it becomes law and applies to actions filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/26

S. B. No. 1715 Amendment No. 1

COMMITTEE SUBSTITUTE ✓ (to be filled in by Principal Clerk)

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 41

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 rewriting that line to read:

5

6 "SECTION 4. This act is effective

7 October 1, 2008, and applies to."

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 887

Committee Substitute Favorable 5/22/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H887-PCS70786-RK-71

Short Title: Amend Criminal Offense of Stalking. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CRIMINAL OFFENSE OF STALKING AND TO INCREASE THE PENALTY FOR STALKING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-277.3 is repealed.

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-277.3A. Stalking.**

(a) Legislative Intent. – The General Assembly finds that stalking is a serious problem in this State and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time.

The General Assembly recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The General Assembly recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

(b) Definitions. – The following definitions apply in this section:

(1) Course of conduct. – Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties,

by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(2) Harasses or harassment. – Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

(3) Reasonable person. – A reasonable person in the victim's circumstances.

(4) Substantial emotional distress. – Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) Offense. – A defendant is guilty of stalking if the defendant willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

(d) Classification. – A violation of this section is a Class A1 misdemeanor. A defendant convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking when there is a court order in effect prohibiting similar behavior by that defendant is guilty of a Class G felony.

(e) Jurisdiction. – Pursuant to G.S. 15A-134, if any part of the offense occurred within North Carolina, including the defendant's course of conduct or the effect on the victim, then the defendant may be prosecuted in this State."

SECTION 3. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 887:
Amend Criminal Offense of Stalking

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 25, 2008
Introduced by:	Reps. Wiley, Langdon, Ray, Underhill	**Summary by:**	Hal Pell
Version:	PCS to Second Edition H887-PCS70786-RK-71		Committee Co-Counsel

SUMMARY: House Bill 887 rewrites the law that defines the criminal offense of stalking, to include a course of conduct of two or more acts in which the offender follows, monitors, observes, surveils, threatens, communicates to or about a person, or interferes with a person's property. The bill would increase the penalty for stalking when a court order is in effect, making it a Class G felony. Otherwise, the penalty would remain the same as under current law. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

CURRENT LAW:

- Under G.S. 14-277.3, the offense of stalking is committed if a person willfully and repeatedly follows or harasses another person with the intent to place that person in fear of his or her safety or cause that person to suffer emotional distress.
- "Harassment" is defined as conduct directed at a specific person that torments, terrorizes, or terrifies that person and serves no legitimate purpose.
- Violation is generally a Class A1 misdemeanor, and a defendant who is sentenced to a community punishment must be placed on supervised probation in addition to any other punishment imposed by the court. However, if the offense is committed in violation of a court order prohibiting similar conduct, violation is a Class H felony. A person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

[**Note:** See reverse for a comparison of current law and this act].

BILL ANALYSIS:

House Bill 887 redefines the criminal offense of stalking, and increases the penalty from a Class H felony to a Class G felony when a court order is in effect prohibiting similar behavior. Assuming there are no prior offenses, the presumptive minimum sentence for a Class G felony is 10-13 months intermediate or active punishment. The bill would become effective December 1, 2008 and apply to offenses committed on or after that date.

PCS:

- Repeals current law, instead of using same section number for a revised criminal offense.
- Includes the term "without legal purpose" that was omitted in the definition of the offense.
- Includes "Pursuant to 15A-134" in subsection (e), clarifying that current law already provides jurisdiction. Absent this inclusion, might reflect that special provision required for jurisdiction.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. Prosecutions under the current law are not abated by this act.

CURRENT LAW	HB 887 PCS
Willfully on more than one occasion follows or is in the presence of, or otherwise ***harasses***, another person without legal purpose. Defines harassment as knowing conduct, including ***written communication, telephone, fax, e-mail, etc. that is directed at a specific person*** and torments, terrorizes, or terrifies that person and serves no legitimate purpose.	***Willfully harasses*** another person without legal purpose, or ***willfully engages in a course of conduct directed at a specific person.*** Defines course of conduct as ***2 or more acts, in which the offender is in the presence of***, or ***follows***, ***monitors***, ***observes***, ***surveils***, ***threatens, or communicates to or about the person***, or ***interferes with a person's property.***
Requires that defendant have the intent to (1) place the person in reasonable fear for the person's safety or the safety of the person's immediate family or close personal associates, or (2) cause the person emotional distress by placing the person in fear of death, bodily injury or continued harassment	***Substitutes specific intent requirement*** with ***a "reasonable person" standard***; retaining current language regarding the victim's fear for safety and the victim's emotional distress by being in fear of death, bodily injury or continued harassment
General: ***Class A1 misdemeanor*** Court order in effect: ***Class H felony*** Previous Stalking Offense: ***Class F felony***	Increases penalty when court order in effect to ***Class G felony;*** otherwise, penalty is the same as under current law.

Summary contribution and comparison chart by Brenda Carter, Staff Attorney.

H0887e2-SMRK-CSRK

§ 14-277.3. Stalking.

(a) Offense. – A person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence of, or otherwise harasses, another person without legal purpose and with the intent to do any of the following:

(1) Place that person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.

(b) Classification. – A violation of this section is a Class A1 misdemeanor. A person convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior by that person is guilty of a Class H felony. A person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

(c) Definition. – For the purposes of this section, the term "harasses" or "harassment" means knowing conduct, including written or printed communication or transmission, telephone or cellular or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions, directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose. (1991 (Reg. Sess., 1992), c. 804, s. 1; 1993, c. 539, s. 173; 1994, Ex. Sess., c. 24, s. 14(c); 1997-306, s. 1; 2001-518, s. 1; 2003-181, s. 1.)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 26, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
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Chris Kukla	CRL
Al Ripley	NC Justice Ctr
Selena Childs	CFTF
Tom Vitalione	CFTF
R. Paul Wilms	NCHBA
Sherry Creech	DMV
Linda Hill	DMV
Jim Blackburn	NC Association of County Commissioners
Karen Calhoun	NC Sentencing Commission
Anthony Guyton	DOC
Lee McKellar	Nelson Mullins

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 26, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cady Thomas	NCAR
John Valentine	NCAR
Barbara Moore	Conf. of Clerks of Sup. Ct.
Gary Robertson	AP
Lisa Piercy	Ragsdale Liggett PLLC
Martha McInnes	Carolinas HealthCare Sys.
Hugh Tilson	NCHA
Jamal Jones	NCHA
Colleen Kodlanek	Smith Moore

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 26, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	JD, AL, PA
Jim Stegall	U.C.P.S.
S. Aycock	NC DOA
Natasha Farrer	NC DOA
Leslie Arnold	SOG - Daily Bulletin
Rhonnah Blake	NCCASA
Sarah Becker	NCCASA
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Rose Williams	NC DOI
[signature]	Bode & Assoc.
Cameron Hunter	Electricities of NC, Inc.

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee — June 26, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Crouch	NCBIA
Paul Meyer	NCACC
John Phelps	NCLM
Jennifer Chrisonon	NCDOL
Sara Riggins	NCDOL
John Goodman	NC Chamber
Jason Kuster	NC Associates
Lee-Ann [illegible]	NCC & Assoc.
Susan Valentine	Nationwide
Bill Scoggin	KCC
Robert Zimmerc	NC DOT

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

July 1, 2008

MINUTES

The Senate Judiciary I (Civil) Committee met Tuesday, July 1, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 10:09 a.m..

In attendance were Vice Chairman Dan Clodfelter, Vice Chairman Phil Berger, Senator Julia Boseman, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Vernon Malone, Senator Floyd McKissick, Senator Tony Rand, Senator Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw and Hall Pell. Research assistant Denise Huntley and Committee assistant Jessica Kozma Bennett were also present.

House Bill 1284

Chairman Nesbitt recognized Representative Paul Stam for House Bill 1284, "an act to provide that cause of action against a local government arising out of a contract to improve real property otherwise barred by the statute of limitations may be commenced no later than ninety days after substantial completion of the construction."

A Proposed Committee Substitute was distributed by membership and adopted for discussion by a motion by Senator Hoyle. After the PCS adoption, Chairman Nesbitt called on Ms. MeGraw to explain changes included in the PCS. Changes include moving the statute of limitation for action against a local government from two years to 90 days from significant completion of the project. The PCS also has language changes, including removal of all references to General Statute 1-52 and inserting the word "proper' so that notice requirement in General Statute 1-53(1)(i) reads "such an action may be brought no later than ninety days after substantial completion, provided proper notice of the claim has been given if required by contract." Other conditions for claims within two and six year windows remain statutory.

Chairman Nesbitt called on members of the audience to address any concerns they have regarding the bill. Jim Blackburn of the North Carolina Association of County Commissioners addressed the committee and said that he and his organization are comfortable with the bill. Andrew Romanet, Jr. of the North Carolina League of

Municipalities was also recognized and said he understands the representatives from state agencies may not like the bill. Senator Clodfelter asked staff is there was a change in the time of accrual, of which Ms. McGraw said there was not.

Senator Tillman moved for favorable report, unfavorable as to original bill. The motion passed unanimously.

House Bill 44

Representative Marian McLawhorn was recognized by the Chair for House Bill 44, a bill reducing the number of prior violations of a domestic violence protective order to be charged as a felony. Representative McLawhorn said there is a companion senate bill and explained that the bill came from recommendations by the Domestic Violence Commission as well as advocates for domestic violence victims. Senator Kinnaird asked where the companion bill was. Mr. Pell answered that is was still in house committee.

Senator Brunstetter questioned how many times the committee had gone through bills to increase penalties for domestic violence offenders. Senator Clodfelter asked staff to include summaries in future bill explanations. Senator McKissick asked if the bill was directed at a person stalking one victim or several. ***Senator Jenkins*** said that because it was a domestic violence issue, the amount of victims did not matter and ***moved for favorable report. The motion was seconded by Senator Graham. Though unanimous vote, the bill received favorable report.***

House Bill 2341

Representative Jennifer Weiss was recognized to handle House Bill 2341, a bill limiting liability for certified child passenger safety technicians as well as sponsoring organizations for acts or omissions in inspections, installations or adjustments of child safety seats. ***A PCS was distributed to membership and adopted for discussion through a motion by Senator Kinnaird.***

Senator Tillman said that businessmen were offering child safety clinics as a public service and that language used in a Senate companion bill were more agreeable. Chairman Nesbitt asked where the bill currently was. Ms. McGraw answered that the bill was in the House Judiciary I Committee.

Senator Stevens offered an amendment changing language on Page 2, lines 27-34 by deleting its content and adding "cause of action arising on or after that date on Page 2, lines 36 and 37. Senator Brunstetter moved for favorable report, unfavorable as to original bill. The motion carried unanimously.

House Bill 1113

Chairman Nesbitt called on Representative Glazier to discuss House Bill 1113 while ***a PCS was distributed to members. Senator Rand moved for adoption of the PCS and the motion carried unanimously.*** Representative Glazier said the bill was heard in House committee without any significant questions. He added the public duty doctrine is codified, protecting law enforcement from liability when responding to calls because of a lack of personnel or time. Senator Hoyle expressed concerns about the bill, saying that a

police chief from his district was in the audience. As discussion continued, Chairman Nesbitt asked Representative Glazier for an example of how the duty would be applied. Members discussed immunity for state law enforcement versus local law enforcement agencies. Senator Clodfelter moved to amend the bill, amendment passes unanimously.

Terry Sullivan, Chief of Police for Gaston County and Eddie Caldwell, lobbyist for the North Carolina Sheriff's Association both expressed concerned about the bill, particularly that courts maybe become confused with its application. The bill was displaced to be heard at a future meeting. The meeting was adjourned at 10:58 a.m.

Respectfully submitted,

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1284

Committee Substitute Favorable 4/26/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1284-CSTC-65 [v.4]

6/30/2008 3:17:55 PM

Short Title: Breach/Construction Contract Accrual Date. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CAUSE OF ACTION AGAINST A LOCAL GOVERNMENT ARISING OUT OF A CONTRACT TO IMPROVE REAL PROPERTY OTHERWISE BARRED BY THE STATUTE OF LIMITATIONS MAY BE COMMENCED NO LATER THAN NINETY DAYS AFTER SUBSTANTIAL COMPLETION OF THE CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-53(1) reads as rewritten:

"(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. Unless otherwise provided by law, if the preceding sentence of this subsection would bar commencement of a cause of action arising out of a contract to improve real property: (i) such an action may be brought no later than ninety days after substantial completion, provided proper notice of the claim has been given if required by contract, or (ii) if prior to substantial completion the contract was terminated by either party, such an action may be brought no later than ninety days after the date of termination of the contract. As used in this subsection, 'substantial completion' has the same meaning as in G.S. 1-50(a)(5)c. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article."

SECTION 2. This act is effective when it becomes law, applies to actions filed on or after that date, and does not revive claims previously barred under G.S. 1-53(1).

HOUSE BILL 1284:
Breach/Construction Contract Accrual Date

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 1, 2008
Introduced by:	Rep. Stam	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to Second Edition H1284-CSTC-65[v5]		

SUMMARY: ***The PCS for House Bill 1284 would provide the following exception to the existing statute of limitations for contracts to improve real property against local governments under G.S. 1-53: if the applicable statute of limitations had run and would bar commencement of an action, the action could be brought no later than 1) ninety days after substantial completion of the improvement, or 2) if the contract was terminated prior to substantial completion, no later than ninety days after termination.***

The revised PCS makes the following changes:

- ***Removes all references to G.S. 1-52.***
- ***Inserts the word "proper" so that the notice requirement in G.S. 1-53(1)(i) reads "such an action may be brought no later than ninety days after substantial completion, provided proper notice of the claim has been given if required by contract,".***

CURRENT LAW: The relevant sections are set out in full at the end of the summary.

G.S. 1-15(a) provides that civil actions can only be commenced within periods prescribed in the Civil Procedure chapter after the cause of action has accrued, unless a statute specifically prescribes a different limitation. Case law has held that causes of action for both breach of contract and breach of warranty accrue on the date of the breach. Kaleel Builders, Inc. v. Ashby, 161 N.C.App. 34, 43-44, 587 S.E.2d 470, 477 (2003).

G.S. 1-53(1) provides for a two-year statute of limitations for actions against a local unit of government upon a contract, obligation, or liability arising out of a contract, express or implied.

G.S. 1-50(5) creates a statute of repose of six years for actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property, running from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement. "Substantial completion" is defined in G.S. 1-50(c)(5)(c) as the "degree of completion of a project, improvement or specified area or portion therefore (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it is intended. The date of substantial completion may be established by written agreement."

BILL ANALYSIS: The PCS to House Bill 1284 would amend G.S. 1-53(1) to provide that, unless otherwise provided by law, if the two year statute of limitation would bar commencement of a cause of action against a local unit of government arising out of a contract to improve real property, such an action may be brought:

1) no later than ninety days after substantial completion, or

2) if the contract is terminated prior to substantial completion, no later than ninety days after termination of the contract.

The term "substantial completion" as used in the subsection would have the same meaning as in G.S. 1-50.

EFFECTIVE DATE: This bill would become effective when it becomes law and would apply to actions filed on or after that date. It would not revive claims previously barred under G.S. 1-53(1).

BACKGROUND: In ABL Plumbing v. Bladen County Board of Education, 175 N.C. App. 164 (2005), the N.C. Court of Appeals held that a cause of action for breach of contracts accrues as soon as the injury becomes

apparent to the claimant or should reasonably become apparent. The Court of Appeals found that the statute of limitations barred an action against the Bladen Board of Education for breach of contract and breach of warranty filed more than two years after the contract was breached and the plaintiff was aware of the breach. Plaintiff suggested that a new rule applicable to actions on construction contracts be adopted, providing that a cause of action would not accrue until substantial completion of performance. Plaintiff based this argument on policy grounds, including that such a change would encourage completion of construction contracts, avoid abandonment and litigation, and encourage nonjudical resolution of controversies. The Court of Appeals stated that such arguments were better addressed to the legislature and declined to adopt the new rule.

Relevant Statutes

§ 1-15. Statute runs from accrual of action.

(a) Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute.

§ 1-53. Two years.

Within two years –

(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article.

§ 1-50. Six years.

(a) Within six years an action –

(5) a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;

2. Actions to recover damages for the negligent construction or repair of an improvement to real property;

3. Actions to recover damages for personal injury, death or damage to property;

4. Actions to recover damages for economic or monetary loss;

5. Actions in contract or in tort or otherwise;

6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;

7. Actions against a surety or guarantor of a defendant described in this subdivision;

8. Actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;

9. Actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, "substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

H1284e2-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 44*
Committee Substitute Favorable 6/23/08
Third Edition Engrossed 6/26/08

Short Title: DV Orders/Repeat Violators. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW RELATED TO VIOLATIONS OF DOMESTIC VIOLENCE PROTECTIVE ORDERS BY INCREASING THE PENALTY FOR REPEAT OFFENDERS AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-4.1(f) reads as rewritten:

"(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of ~~three~~ two offenses under this Chapter, shall be guilty of a Class H felony."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date, but offenses committed before that date count in determining the total prior offenses.

HOUSE BILL 44:
DV Orders/Repeat Violators

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 29, 2008
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield, Parmon	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	Third Edition		

SUMMARY: ***This act would reduce the number of prior violations of a domestic violence protective order required for charging a violation as a felony. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.***

[As introduced, this bill was identical to S27, as introduced by Sen. Boseman, which is currently in Senate Judiciary l (Civil).]

CURRENT LAW: A person that has three prior convictions for violating a domestic violence protective order (a Class A1 misdemeanor) can be charged with a felony for a fourth violation.

BILL ANALYSIS: The bill reduces the number of violations required from three to two in order for a violation to be charged as a Class H felony.

EFFECTIVE DATE: This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

H0044e3-SMRK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H **3**

HOUSE BILL 2341*

Committee Substitute Favorable 6/10/08
Third Edition Engrossed 6/12/08

Short Title: Child Passenger Safety Technician Liability. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO LIMIT LIABILITY FOR THE ACTS OF CERTIFIED CHILD PASSENGER SAFETY TECHNICIANS AND SPONSORING ORGANIZATIONS OF CHILD SAFETY SEAT EDUCATIONAL AND CHECKING PROGRAMS WHEN TECHNICIANS AND SPONSORING ORGANIZATIONS ARE ACTING IN GOOD FAITH AND CHILD SAFETY SEAT INSPECTIONS, INSTALLATION, ADJUSTMENT, OR EDUCATION PROGRAMS ARE PROVIDED WITHOUT FEE OR CHARGE, AS RECOMMENDED BY THE 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:

"**§ 20-137.5. Child passenger safety technician; limitation of liability.**

(a) The following definitions apply in this section:

(1) Certified child passenger safety technician. – A certified child passenger safety technician is an individual who has successfully completed the U.S. Department of Transportation National Highway Traffic Safety Administration's (NHTSA) National Standardized Child Passenger Safety Certification Training Program and who maintains a current child passenger safety technician or technician instructor certification through the current certifying body for the National Child Passenger Safety Training Program as designated by the National Highway Traffic Safety Administration.

(2) Sponsoring organization. – A sponsoring organization is a person or organization other than a manufacturer of or employee or agent of a manufacturer of child safety seats that:

a. Offers or arranges for the public a nonprofit child safety seat educational program, checkup event, or checking station program utilizing certified child passenger safety technicians; or

b. Owns property upon which a nonprofit child safety seat educational program, checkup event, or checking station program for the public occurs utilizing certified child passenger safety technicians.

(b) Limitation of Liability. – Except as provided in subsection (c) of this section, a certified child passenger safety technician or sponsoring organization shall not be liable to any person as a result of any act or omission that occurs solely in the inspection, installation, or adjustment of a child safety seat or in providing education regarding the installation or adjustment of a child safety seat if:

(1) The service is provided without fee or charge other than reimbursement for expenses, and

(2) The child passenger safety technician or sponsoring organization acts in good faith and within the scope of training for which the technician is currently certified.

(c) Exceptions. – The limitation on liability shall not apply under any of the following conditions:

(1) The act or omission of the certified child passenger safety technician or sponsoring organization constitutes willful or wanton misconduct or gross negligence.

(2) The inspection, installation, or adjustment of a child safety seat or education provided regarding the installation or adjustment of a child safety seat is in conjunction with the for-profit sale of a child safety seat.

(3) To the extent the certified child passenger safety technician or sponsoring organization is indemnified by insurance for the negligent acts or omissions. An insurer shall not under a contract of insurance exclude from liability coverage the negligent acts or omissions of a certified child passenger safety technician or sponsoring organization for which the certified child passenger safety technician or sponsoring organization would only be liable to the extent indemnified by insurance as provided by this subdivision."

SECTION 2. This act becomes effective October 1, 2008, and applies to any cause of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 2341*
Committee Substitute Favorable 6/10/08
Third Edition Engrossed 6/12/08
PROPOSED SENATE COMMITTEE SUBSTITUTE H2341-CSTC-70 [v.1]

6/25/2008 5:27:39 PM

Short Title: Child Passenger Safety Technician Liability. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO LIMIT LIABILITY FOR THE ACTS OF CERTIFIED CHILD PASSENGER SAFETY TECHNICIANS AND SPONSORING ORGANIZATIONS OF CHILD SAFETY SEAT EDUCATIONAL AND CHECKING PROGRAMS WHEN TECHNICIANS AND SPONSORING ORGANIZATIONS ARE ACTING IN GOOD FAITH AND CHILD SAFETY SEAT INSPECTIONS, INSTALLATION, ADJUSTMENT, OR EDUCATION PROGRAMS ARE PROVIDED WITHOUT FEE OR CHARGE, AS RECOMMENDED BY THE 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:

"**§ 20-137.5. Child passenger safety technician; limitation of liability.**

(a) The following definitions apply in this section:

(1) Certified child passenger safety technician. – A certified child passenger safety technician is an individual who has successfully completed the U.S. Department of Transportation National Highway Traffic Safety Administration's (NHTSA) National Standardized Child Passenger Safety Certification Training Program and who maintains a current child passenger safety technician or technician instructor certification through the current certifying body for the National Child Passenger Safety Training Program as designated by the National Highway Traffic Safety Administration.

(2) Sponsoring organization. – A sponsoring organization is a person or organization other than a manufacturer of or employee or agent of a manufacturer of child safety seats that:

a. Offers or arranges for the public a nonprofit child safety seat educational program, checkup event, or checking station program utilizing certified child passenger safety technicians; or

b. Owns property upon which a nonprofit child safety seat educational program, checkup event, or checking station program for the public occurs utilizing certified child passenger safety technicians.

(b) Limitation of Liability. – Except as provided in subsection (c) of this section, a certified child passenger safety technician or sponsoring organization shall not be liable to any person as a result of any act or omission that occurs solely in the inspection, installation, or adjustment of a child safety seat or in providing education regarding the installation or adjustment of a child safety seat if:

(1) The service is provided without fee or charge other than reimbursement for expenses, and

(2) The child passenger safety technician or sponsoring organization acts in good faith and within the scope of training for which the technician is currently certified.

(c) Exceptions. – The limitation on liability shall not apply under any of the following conditions:

(1) The act or omission of the certified child passenger safety technician or sponsoring organization constitutes willful or wanton misconduct or gross negligence.

(2) The inspection, installation, or adjustment of a child safety seat or education provided regarding the installation or adjustment of a child safety seat is in conjunction with the for-profit sale of a child safety seat.

(3) To the extent the certified child passenger safety technician or sponsoring organization is indemnified by insurance for the negligent acts or omissions. An insurer shall not under a contract of insurance exclude from liability coverage the negligent acts or omissions of a certified child passenger safety technician or sponsoring organization for which the certified child passenger safety technician or sponsoring organization would only be liable to the extent indemnified by insurance as provided by this subdivision."

SECTION 2. This act becomes effective October 1, 2008, and applies to any cause of action arising on or after that date and to any contracts of insurance issued, renewed, or amended on or after that date.

HOUSE BILL 2341:
Child Passenger Safety Technician Liability

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 1, 2008
Introduced by:	Reps. Weiss, Martin, Earle, Pierce	**Summary by:**	Kara McCraw
Version:	PCS to Third Edition H2341-CSTC-70[v1]		Committee Counsel

SUMMARY: ***The PCS for House Bill 2341 would limit liability for certified child passenger safety technicians and sponsoring organizations for acts or omissions in the inspection, installation, or adjustment of child safety seats, or education regarding the installation or adjustment of child safety seats.***

The PCS for House Bill 2341 would clarify in Section 2 that the bill would apply to contracts of insurance issued, renewed, or amended on or after the effective date of October 1, 2008.

[As introduced, this bill was identical to S1736, as introduced by Sen. Purcell, which is currently in House Judiciary I.]

CURRENT LAW: G.S. 20-137.1(b) requires children less than eight years of age and less than 80 pounds in weight to be properly secured in vehicles in a weight-appropriate child passenger restraint system.

BILL ANALYSIS: House Bill 2341 would do the following:

a. Define Certified Child Passenger Safety Technician - An individual who successfully completes and maintains certification through the National Child Passenger Safety Training Program.

b. Define Sponsoring Organization – A person or organization other than a manufacturer of child safety seats that either 1) offers or arranges a nonprofit child safety seat educational program or event using certified technicians, or 2) owns property on which a nonprofit child safety seat educational program or event is held.

c. Limit Liability of Certified Child Passenger Safety Technicians and Sponsoring Organizations - Provide that a certified child passenger safety technician or sponsoring organization would not be liable as a result of:

1. Any act or omission occurring solely in the inspection, installation, or adjustment of a child safety seat, or
2. In providing education regarding the installation or adjustment of a child safety seat

if the certified technician or sponsoring organization acts in good faith and within the scope of the training for which the technician is currently certified, and the service is provided without fee or charge other than reimbursement for expenses. The limitation of liability would not apply under any of the following conditions:

1. Acts or omission constituting willful and wanton misconduct or gross negligence.
2. If the service or education was provided in conjunction with the for-profit sale of a child safety seat.
3. To the extent the certified technician or sponsoring organization is indemnified by insurance for the negligent acts or omissions.

- An insurer would not be allowed under an insurance contract to exclude a certified technician or sponsoring organization from liability coverage for negligent acts or omissions for which the certified technician or sponsoring organization would only be liable to the extent indemnified by insurance.

EFFECTIVE DATE: This bill would become effective October 1, 2008, and applies to any cause of action arising on or after that date, and to any contracts of insurance issued, renewed, or amended on or after that date.

BACKGROUND: This bill was recommended by the Child Fatality Task Force. The National Child Passenger Safety Certification was developed in 1998 by the National Highway Traffic Safety Administration at the recommendation of a Blue Ribbon Commission. NHTSA develops the national curriculum for the certification, and the National SAFE KIDS Campaign currently serves as the certifying body. The certification trains individuals to properly use and install child restraints and safety belts and to teach these skills to parents. Successful completion of this course certifies the individual as a CPS technician for two years. The Child Fatality Task Force reports that there are currently 1900 certified CPS technicians in North Carolina.

Six other states have enacted similar legislation limiting civil liability for certified CPS technicians: Gerogia, Maryland, Pennsylvania, Virginia, Washington and Wisconsin.

This bill summary was contributed to by Michele Andrejco, Legal Intern.

H2341e3-SMTC-CSTC

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2341*

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

H2341-ATC-77 [v.3]

Date _____,2008

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

Senator Stevens

moves to amend the bill on page 2, lines 27-34 by deleting those lines,

and on page 2, lines 36-37 by rewriting those lines as follows:

"cause of action arising on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1113

Short Title:	State Tort Claims/Public Duty Doctrine.	(Public)
Sponsors:	Representatives Glazier, Faison (Primary Sponsors); and Harrison.	
Referred to:	Judiciary II.	

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN AFFIRMATIVE DEFENSE FOR CIVIL ACTIONS UNDER THE STATE TORT CLAIMS ACT TO THOSE CLAIMS IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF THE ALLEGED NEGLIGENT FAILURE OF LAW ENFORCEMENT TO PROTECT CLAIMANTS FROM THE MISCONDUCT OF OTHERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.**

The public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which the claim is asserted if and only if the injury of the claimant is the result of the alleged negligent failure of law enforcement to protect the claimant from the misconduct of others."

SECTION 2. This act is effective when it becomes law and applies to judgments entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1113
PROPOSED SENATE COMMITTEE SUBSTITUTE H1113-CSST-108 [v.12]

6/30/2008 8:12:28 PM

Short Title: State Tort Claims/Public Duty Doctrine. (Public)

Sponsors:

Referred to:

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN AFFIRMATIVE DEFENSE FOR CLAIMS UNDER THE STATE TORT CLAIMS ACT IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF THE ALLEGED NEGLIGENT FAILURE OF CERTAIN PARTIES TO PROTECT CLAIMANTS FROM THE ACTION OF OTHERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.**

(a) Except as provided in subsection (b) of this section, the public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which a claim is asserted if and only if the injury of the claimant is the result of any of the following:

(1) The alleged negligent failure to protect the claimant from the action of others by any of the following:

a. Law enforcement officers as defined in G.S. 143-166.30(a)(4).

b. Fire fighters as defined in G.S. 113-60.32(1).

c. Probation officers appointed under Article 20 of Chapter 15 of the General Statutes.

(2) The alleged negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health or safety inspection required by statute.

(b) The affirmative defense of the public duty doctrine may not be asserted in any of the following instances:

(1) Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.

(2) When the State, through its officers, employees, involuntary servants or agents, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.

(3) Where the alleged failure to perform a health or safety inspection required by statute was the result of gross negligence."

SECTION 2. This act is October 1, 2008, and applies to claims arising on or after that date.

HOUSE BILL 1113:
State Tort Claims/Public Duty Doctrine

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 30, 2008
Introduced by:	Reps. Glazier, Faison	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1113-CSST-108v11		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1113 would allow the use of the public duty doctrine as an affirmative defense to claims under the State Tort Claims Act in certain instances.***

CURRENT LAW: Article 31 of Chapter 143, Tort Claims against State Departments and Agencies ("the State Tort Claims Act") provides the statutory framework for an individual to sue the state for the negligent actions of an employee of the State. Generally, the common law rule of "sovereign immunity" provides the State is immune from suit. The State Tort Claims Act partially waives sovereign immunity, allowing individuals to sue the State for injuries proximately caused by the negligent actions of a State employee acting within the scope of his or her employment.

The "public duty doctrine" is a common law rule that limits tort liability when the State owes a duty to the general public. Generally, if the State owes a duty to the general public, an individual cannot enforce the duty in tort. There are two exceptions to the public duty doctrine:

1. Where there is special relationship between the injured party and the governmental entity.
2. When the governmental entity creates a special duty by promising protection to an individual, the protection is not given, and the individual's reliance on the promised protection proximately caused the injury suffered.

The public duty doctrine is an affirmative defense to a claim of negligence. An "affirmative defense" must be plead, otherwise it is considered waived.

The North Carolina courts have applied the public duty doctrine to "law enforcement departments when they are exercising their general duty to protect the public" and to State agencies required by statute to conduct inspections for the public's general protection.

The only statutory defense provided in the Torts Claim Act itself is the defense of contributory negligence. G.S. 143-299.1.

BILL ANALYSIS:

The pcs for House Bill 1113 codifies that the **public duty doctrine <u>may</u> be asserted** as an affirmative defense only in claims of injury in the following two instances:

1. As the result of the negligent failure of law enforcement or fire fighter to protect the claimant from the action of others.
   - ➢ <u>Law enforcement officers</u> are defined as "means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State." G.S. 143-166.30(a)(4).

- Fire fighters are defined as "an employee of the Division of Forest Resources of the Department of Environment and Natural Resources who engages in fire suppression duties." G.S. 116-60.32(1).
- Probation officers appointed under Article 20 of Chapter 15 of the General Statutes.

2. As the result of the negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health and safety inspection required by statute.

The pcs specifically states three instances in which the **public duty doctrine may not be asserted**:

1. Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.
2. When the State, through its officer, employee, involuntary servant or agent of the State, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.
3. Where the alleged failure to perform a health and safety inspection required by statute was the result of gross negligence.

EFFECTIVE DATE: October 1, 2008, and applies to claims arising on or after that date.

BACKGROUND: The public duty doctrine began in North Carolina in a 1991 case involving a lawsuit, not under the Tort Claims Act, but against a sheriff. In *Braswell v. Braswell*, the son of a woman killed by her husband sued the husband and also named the sheriff for negligence in not protecting his mother. The NC Supreme Court ruled that the common law public duty doctrine recognized that a local government has a duty of law enforcement to protect the public, and because of its limited resources in doing so cannot be liable for failure to furnish protection for specific individuals. The court recognized the special relationship and special duty exceptions to the doctrine.

In 1998, the Supreme Court applied the public duty doctrine to two cases under the State Tort Claims Act. One, *Stone v. NC Department of Labor*, arose out of the famous 1991 fire in the chicken processing plant in Hamlet. The plaintiffs, the injured and the estates of the dead from that fire, sought damages from the Department for failure to inspect the plant for adequate fire exits. The other, *Hunt v. NC Dept. of Labor*, arose out of an injury from an amusement ride that the Department had inspected and declared safe. Using the same reasoning as in *Braswell*, the sheriff case, the Court said the public duty doctrine shielded the Department from liability.

In 2000, the Supreme Court decided not to apply the public duty doctrine in a non-Tort Claims case, *Lovelace v. City of Shelby*, against the city for negligence of its 911 operator in directing firefighters to a fire. Justice Robert Orr, who had dissented in the Stone and Hunt cases, wrote the opinion and made it clear he thought the *Braswell* case should have been limited to its facts.

After a series of decisions in the NC Court of Appeals which followed Lovelace's limited view of the public duty doctrine, the NC Supreme Court revisited the doctrine in 2006 in *Myers v. McGrady*. There, Justice William Wainwright applied the public duty doctrine to shield the Division of Forest Services against a claim under the Tort Claims Act that it failed to warn motorists of the reduced visibility from a forest fire that resulted in an accident. The court said the Division's duty was to the general duty, and there was not special duty to the motorists.

The most recent Supreme Court decision involving the public duty doctrine occurred last month in *Multiple Claimants v NC DHHS*, in which the Department was held liable for negligent failure in its inspection of the Mitchell County jail, where a fire resulted in injury and death. Justice Patricia Timmons-Goodson ruled that the duty of DHHS to inspect the jail fell into the "special relationship" exception because the statute that said the Dept was to inspect the jail said it was for the benefit of the prisoners, rather than for the general public.

Some commentators have asserted that some of the court cases are inconsistent, and that many of them threaten to wipe out the decision of the General Assembly in 1951 to waive sovereign immunity through the Tort Claims Act. A 2006 Campbell Law Review article called for the Supreme Court to totally abrogate the doctrine.

Heather Fennell and Bill Gilkeson substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1113 DATE 7-1-08

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

COMMITTEE SUBSTITUTE ✓

Rep.) Clodfelter
Sen.)

1 moves to amend the bill on page 2, line 6-7 1148
2 ( ) WHICH CHANGES THE TITLE
3 by inserting the following between those lines:
4
5 "(c) Nothing in this section shall
6 limit the assertion of the public duty doctrine
7 as an affirmative defense on the part of
8 a unit of local government or its officers,
9 employees, or agents."
10
11
12 and on page 2, line 7 by inserting
13 "effective" between "is" and "October".
14
15
16
17
18
19

SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 1, 2008

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Joanna Shoaf	NCDOT
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James Gheen	Intern for Senator Doug Berger
John Goodman	NC Chamber
Debra DeCamillis	IOG
Betty Conner	Bank of America
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[illegible]	Electricities
[illegible]	[illegible]
Fran Blumgarner	DV Advocate
Virginia Smith (Veni)	NC Coalition Against Domestic Violence
Janeen Gingrich	NC Coalition Against Domestic Violence
Thomas C. Cook, J.	CCPS
Bo Heath	
Anthony Allison	NCACC
Jim Blackburn	Association of County Commissions
Berry Jenkins	Carolinas AGC

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John Madler	NC Sentencing Commission
Amy McConkey	Smith Anderson
David Simmons	GSK
Gary Salamido	GSK
Ken Crouch	NCBA
Tracy Little	NC DOC
LaVee Hamer	NC DOC

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R. Paul Wilms	NCHBA
Kristy Sult	Gastonia Police — Metro Chiefs
Frank Palombo	New Bern Police — Metro Chiefs
John Hooman	NCDOL
Sara Riggins	NCDOL
Evan Fogget	CRL
Jennifer Johnson	CRL
Johanna Reese	DOT
Lori Kroll	DOT

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Frank Froom	" "
Jane Smith	DHHS

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AL DEITCH	DOT/NAID
Allison Dyer	NCNS

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

July 3, 2008

MINUTES

The Senate Judiciary I (Civil) Committee met Thursday, July 3, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 10:07 a.m..

Also in attendance were Vice Chairman Dan Clodfelter, Vice Chairman Phil Berger, Senator Julia Boseman, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Vernon Malone, Senator Floyd McKissick, Senator Tony Rand, Senator Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw and Hall Pell. Research assistant Denise Huntley and Committee assistant Jessica Kozma Bennett were also present.

House Bill 2188

Chairman Nesbitt called on Representative Blue to speak to House Bill 2188, a bill requiring home loan servicers clearly explain any fees associated with a loan within 30 days of the fees' assessment. ***A Proposed Committee Substitute was distributed to member and adopted for discussion by a motion by Senator Brunstetter.***

Chairman Nesbitt called for discussion from members. ***Senator Tillman moved for favorable report, unfavorable as to original bill. The motion carried unanimously.***

Chairman Nesbitt then told the committee that House Bill 1113 regarding state tort claims is displaced until later in the agenda.

Senate Bill 2008

A PCS of Senate Bill 2008 was distributed to members and adopted for discussion through motion by Senator Tillman. Chairman Nesbitt, sponsor of the bill, told the committee that they would not vote on the bill today, but that he wanted membership to take part on the bill's evolvement. The bill, the Medicaid Appeal Act, restructures the appeals process for Medicaid applicants. Chairman Nesbitt said that the bill provides a new procedure for recipient claims, and that currently there were 6,000 backlogged cases with the potential to spike to 10,000 cases.

Senator Brunstetter asked about costs associated with the bill. Carol Lawson with the Division of Medical Assistance said costs would be $1.5 to implement the bill. Chairman Nesbitt added that there would be $1.5 for mediation centers, and an additional $400,000 in legal serves, adding that he is a "firm believer" that if a person has legal representation cases move better. Senator Jenkins asked what the average length of a case was, and questioned how many man hours are involved. Senator Stevens asked how long the bill would need to be in place, of which Chairman Nesbitt answered two years. Chairman Nesbitt then asked Health and Human Services Secretary Dempsey Benton how many appeals were currently backlogged. Secretary Benton answered there were roughly 7,000. Senator Stevens followed up asking if there were a temporary way to deal with the escalation, Chairman Nesbitt replied that several items in the bill were non-recurring funds.

Senator Malone was recognized and said that although he did not want to see a bureaucracy created, the poor and needy would always be with us. He then noted that he had worked with this in another committee. Chairman Nesbitt replied that he hoped this was a community support problem that should be a one time thing, and that he understands that the people served need to have as user friendly a system as possible.

After minimal discussion, the bill was displaced for a future meeting.

House Bill 1113

A PCS was distributed to members and approved for discussion through a motion by Senator Brown. Chairman Nesbitt recognized Representative Glazier to speak to the bill. Representative Glazier said that the bill now covered all law enforcement officers, and "Act of God" was added. He continued that all six issues previously discussed and of concern to the North Carolina Sheriff's Association were answered. ***Senator Brunstetter motioned for favorable report, unfavorable as to original bill. The motion passed unanimously.***

The meeting was adjourned at 10:57 a.m.

Respectfully submitted,

Martin Nesbitt

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 2188

Committee Substitute Favorable 6/23/08

Short Title: Earlier Notification of Mortgage Servicer Fee. (Public)

Sponsors:

Referred to:

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ANY FEE INCURRED BY A HOME LOAN SERVICER BE CLEARLY AND CONSPICUOUSLY EXPLAINED TO THE BORROWER WITHIN THIRTY DAYS AFTER THE FEE IS ASSESSED, TO CLARIFY THAT THE SERVICER IS NOT REQUIRED TO SEND A STATEMENT TO THE BORROWER UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT A SERVICER IS NOT REQUIRED TO PROVIDE NOTIFICATION TO THE BORROWER IF A PARTIAL PAYMENT IS ACCEPTED AND CREDITED IN ACCORDANCE WITH A WRITTEN AGREEMENT, TO MAKE CONFORMING CHANGES IN THE DEFINITION OF HIGH COST HOME LOANS, AND TO ADD TO THE LIST OF PROHIBITED ACTS UNDER THE MORTGAGE LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-91 reads as rewritten:

"**§ 45-91. (Effective April 1, 2008) Assessment of fees; processing of payments; publication of statements.**

A servicer must comply as to every home loan, regardless of whether the loan is considered in default or the borrower is in bankruptcy or the borrower has been in bankruptcy, with the following requirements:

(1) Any fee that is incurred by a servicer shall be both:

a. Assessed within 45 days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within 45 days of the date they are charged by either the attorney or trustee to the servicer.

b. Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address ~~at least~~ within 30 days after assessing the fee, provided the servicer shall not be required to take any action in violation of the

provisions of the federal bankruptcy code. The servicer shall not be required to send such a statement for a fee that: (i) results from a service that is affirmatively requested by the borrower, (ii) is paid for by the borrower at the time the service is provided, and (iii) is not charged to the borrower's loan account.

(2) All amounts received by a servicer on a home loan at the address where the borrower has been instructed to make payments shall be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has made the full contractual payment and has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within 10 business days by mail at the borrower's last known address of the disposition of the payment, the reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

(2a) The notification required by subdivision (2) of this section is not necessary if (i) the servicer complies with the terms of any agreement or plan made with the borrower and has applied and credited payments received in the manner required, and (ii) the servicer is applying and crediting payments to the borrower's account in compliance with all applicable State and federal laws including bankruptcy laws, and if at least one of the following occurs:

a. The borrower has entered into a written loss mitigation, loan modification, or forebearance agreement with the servicer that itemizes all amounts due and specifies how payments will be applied and credited;

b. The borrower has elected to participate in an alternative payment plan, such as a biweekly payment plan, that specifies as part of a written agreement how payments will be applied and credited; or

c. The borrower is making payments pursuant to a bankruptcy plan.

(3) Failure to charge the fee or provide the information within the allowable time and in the manner required under subdivision (1) of subsection (a) of this section constitutes a waiver of such fee.

(4) All fees charged by a servicer must be otherwise permitted under applicable law and the contracts between the parties. Nothing herein is intended to permit the application of payments or method of charging interest which is less protective of the borrower than the contracts between the parties and other applicable law."

SECTION 2. G.S. 24-1.1E(a)(6) reads as rewritten:

"(6) "Thresholds" means:

a. Without regard to whether the loan transaction is or may be a "residential mortgage transaction" (as the term "residential mortgage transaction" is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and ~~fees~~ fees, ~~payable by the borrower at or before the loan closing~~ as defined in G.S. 24-1.1E(a)(5), exceed five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars ($1,000), if the total loan amount is less than twenty thousand dollars ($20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

3. For a closed-end loan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing;
4. For an open-end credit plan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than (i) 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, 30 months after the date the borrower voluntarily exercises that right or option; or

c. If the loan is a closed-end loan, the loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid. If the loan is an open-end credit plan, the loan documents permit the lender to charge or collect prepayment fees or penalties (i) more than 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, more than 30 months after the date the borrower voluntarily exercises that right or option, or (iii) which exceed, in the aggregate, more than two percent (2%) of the amount prepaid."

SECTION 3. G.S. 53-243.11 is amended by adding a new subdivision to read:

"(16) No lender shall provide nor shall any broker receive any compensation that changes based on the terms of the loan in connection with the brokering or making of a rate-spread loan as defined in G.S. 24-1.1F."

SECTION 4. This act becomes effective October 1, 2008.

HOUSE BILL 2188:
Earlier Notification of Mortgage Servicer Fee

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 2, 2008
Introduced by:	Reps. Blue, Church	**Summary by:**	R. Erika Churchill
Version:	PCS to Second Edition H2188-CSST-129v1		Committee Counsel

SUMMARY: ***House Bill 2188 makes several changes to the recently enacted Mortgage Debt Collection and Servicing Act relating to information and notifications that must be provided to a borrower by a servicer.***

CURRENT LAW:

Last year, the General Assembly created new requirements for mortgage debt collection and servicing. The law restricts the amount and condition under which a servicer may assess fees and imposes obligations on the servicer to maintain records and requests for information from the borrower to provide timely responses to the borrower.

Also last year, the legislature amended the anti-predatory lending law to include compensation paid to a mortgage broker in the definition of points and fees, which is part of the basis for determining that a loan fits the definition of a high-cost home loan. The new law also created a new category of loans called "rate-spread loans" which is intended to cover subprime loans. The law places restrictions on these loans including, no prepayment penalties, lenders must determine borrower's ability to repay and verify application data, and if the loan has an adjustable rate, the lender must determine ability to repay using a calculation of payments as if the loan were fully indexed at closing.

BILL ANALYSIS:

Section 1 of this bill amends the Mortgage Debt Collection and Servicing Act to require that any fee incurred by a servicer be clearly and conspicuously explained to the borrower within 30 days after the fee has been assessed. It also clarifies that the servicer is not required to send the explanation to the borrower all of the following apply:

(1) The fee results from a service requested by the borrower.

(2) The fee is paid at the time the service is provided.

(3) The fee is not charged to the borrower's loan account.

The section also amends the provision requiring that a servicer notify a borrower if a payment is not credited when it is received. The amendment provides that if a servicer is complying with the terms of an agreement and with all applicable laws, the servicer need not notify the borrower if any one of the following apply:

(1) The borrower entered into a written agreement that changes the payment requirement and specifies how the payments will by applied and credited.

(2) The borrower chose to participate in an alternative payment plan that specifies how payments will be applied and credited.

(3) The borrower is making payments pursuant to a bankruptcy plan.

Section 2 of the bill makes a conforming change to the definition of the term "thresholds" in the anti-predatory lending law. Last year the law was amended so that the definition of the term "points and fees" includes all compensation paid to a mortgage broker from any source. This section makes a corresponding change to the definition of the term "thresholds".

Section 3 adds to the list of prohibited activities under the Mortgage Lending Act, providing that a mortgage lender or broker may not receive compensation that changes in connection with a rate-spread loan.

EFFECTIVE DATE: This act becomes effective October 1, 2008.

BACKGROUND: This bill was initially recommended by the House Select Committee on Rising Home Foreclosures.

Karen Cochrane-Brown substantially contributed to this summary.

H2188e2-SMST-CSST-129v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 3

HOUSE BILL 2188
Committee Substitute Favorable 6/23/08
Senate Judiciary I (Civil) Committee Substitute Adopted 7/3/08

Short Title: Earlier Notification of Mortgage Servicer Fee. (Public)

Sponsors:

Referred to:

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ANY FEE INCURRED BY A HOME LOAN SERVICER BE CLEARLY AND CONSPICUOUSLY EXPLAINED TO THE BORROWER WITHIN THIRTY DAYS AFTER THE FEE IS ASSESSED, TO CLARIFY THAT THE SERVICER IS NOT REQUIRED TO SEND A STATEMENT TO THE BORROWER UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT A SERVICER IS NOT REQUIRED TO PROVIDE NOTIFICATION TO THE BORROWER IF A PARTIAL PAYMENT IS ACCEPTED AND CREDITED IN ACCORDANCE WITH A WRITTEN AGREEMENT, TO MAKE CONFORMING CHANGES IN THE DEFINITION OF HIGH COST HOME LOANS, AND TO ADD TO THE LIST OF PROHIBITED ACTS UNDER THE MORTGAGE LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-91 reads as rewritten:

"**§ 45-91. (Effective April 1, 2008) Assessment of fees; processing of payments; publication of statements.**

A servicer must comply as to every home loan, regardless of whether the loan is considered in default or the borrower is in bankruptcy or the borrower has been in bankruptcy, with the following requirements:

(1) Any fee that is incurred by a servicer shall be both:

a. Assessed within 45 days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within 45 days of the date they are charged by either the attorney or trustee to the servicer.

b. Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address ~~at least~~ within 30 days after assessing the fee, provided the servicer shall not be required to take any action in violation of the provisions of the federal bankruptcy code. The servicer shall not be required to send such a statement for a fee that: (i) results from a service that is affirmatively requested by the borrower, (ii) is paid for by the borrower at the time the service is provided, and (iii) is not charged to the borrower's loan account.

(2) All amounts received by a servicer on a home loan at the address where the borrower has been instructed to make payments shall be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has made the full

contractual payment and has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within 10 business days by mail at the borrower's last known address of the disposition of the payment, the reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

(2a) The notification required by subdivision (2) of this section is not necessary if (i) the servicer complies with the terms of any agreement or plan made with the borrower and has applied and credited payments received in the manner required, and (ii) the servicer is applying and crediting payments to the borrower's account in compliance with all applicable State and federal laws, including bankruptcy laws, and if at least one of the following occurs:

a. The borrower has entered into a written loss mitigation, loan modification, or forebearance agreement with the servicer that itemizes all amounts due and specifies how payments will be applied and credited;

b. The borrower has elected to participate in an alternative payment plan, such as a biweekly payment plan, that specifies as part of a written agreement how payments will be applied and credited; or

c. The borrower is making payments pursuant to a bankruptcy plan.

(3) Failure to charge the fee or provide the information within the allowable time and in the manner required under subdivision (1) of subsection (a) of this section constitutes a waiver of such fee.

(4) All fees charged by a servicer must be otherwise permitted under applicable law and the contracts between the parties. Nothing herein is intended to permit the application of payments or method of charging interest which is less protective of the borrower than the contracts between the parties and other applicable law."

SECTION 2. G.S. 24-1.1E(a)(6) reads as rewritten:

"(6) "Thresholds" means:

a. Without regard to whether the loan transaction is or may be a "residential mortgage transaction" (as the term "residential mortgage transaction" is defined in section 226.2 (a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and ~~fees~~ fees, ~~payable by the borrower at or before the loan closing~~ as defined in G.S. 24-1.1E(a)(5), exceed five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars ($1,000), if the total loan amount is less than twenty thousand dollars ($20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either

Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

3. For a closed-end loan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing;

4. For an open-end credit plan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than (i) 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, 30 months after the date the borrower voluntarily exercises that right or option; or

c. If the loan is a closed-end loan, the loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid. If the loan is an open-end credit plan, the loan documents permit the lender to charge or collect prepayment fees or penalties (i) more than 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, more than 30 months after the date the borrower voluntarily exercises that right or option, or (iii) which exceed, in the aggregate, more than two percent (2%) of the amount prepaid."

SECTION 3. G.S. 53-243.11 is amended by adding a new subdivision to read:

"(16) In connection with the brokering or making of a rate-spread home loan as defined under G.S. 24-1.1F, no lender shall provide nor shall any broker receive any compensation that changes based on the terms of the loan. This subdivision shall not prohibit compensation based on the principal balance of the loan."

SECTION 4. This act becomes effective October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 2008

Short Title:	Medicaid Appeals Change.	(Public)
Sponsors:	Senators Nesbitt; Atwater, Bingham, and Purcell.	
Referred to:	Judiciary I (Civil).	

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE APPEALS PROCESS FOR MEDICAID RECIPIENTS AND PROVIDERS APPEALING DEPARTMENT OF HEALTH AND HUMAN SERVICES DECISIONS PERTAINING TO ELIGIBILITY AND SERVICES UNDER THE MEDICAID PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective October 1, 2008, the Title of G.S. 108A-79 reads as rewritten:

"**§ 108A-79. ~~Appeals.~~Appeals of county level decisions.**"

SECTION 1.(b) Effective October 1, 2008, Article 4 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§108A-79.1. Appeals by Medicaid applicants and recipients.**

(a) An action by the Department to deny, terminate, suspend, or reduce Medicaid eligibility or to deny, terminate, suspend, or reduce Medicaid services is a "contested case" subject to the provisions of Chapter 150B of the General Statutes, except as provided by this section. At the time of providing the notice required under subsection (b) of this section, the Department shall file a petition with the Office of Administrative Hearings to determine the Medicaid applicant's or recipient's rights, duties, or privileges.

(b) In addition to the notice requirements of G.S. 150B-23, the Department shall provide within 30 days of its decision written notice to the aggrieved applicant or recipient, or the applicant's or recipient's legal guardian, which notice shall include:

(1) An explanation of the Department's decision.

(2) A clear and concise statement of what service is being reduced, terminated, or denied and the basis upon which the decision was made.

(3) A statement that the Department has filed a petition for administrative review of its decision on behalf of the applicant or recipient and that the applicant or recipient has 30 days from the date of the

Department's decision to decide whether or not to proceed with the hearing.

(4) A clear explanation of how the hearing will proceed, what is required of the applicant in order to proceed or to decline to proceed, and that the applicant or recipient may be represented by an attorney at the hearing.

(5) A statement that the recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's decision pending a final decision.

(6) The telephone number of a contact person at the Department to respond in a timely fashion to applicant or recipient questions.

(7) A brochure supplied by the North Carolina Protection and Advocacy System that explains the rights of applicants and recipients under the State Medical Assistance program, including the rights to appeal decisions of the Department.

(c) The agency has the burden of proof to establish by a preponderance of the evidence the facts necessary to support the agency's action.

(d) The Medicaid recipient may appeal the final agency decision to superior court as provided in Article 4 of Chapter 150B of the General Statutes."

SECTION 2.(a) G.S. 150B-1(e) is amended by adding the following new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(16) Hearings arising under the Medical Assistance program established under Part 6 of Chapter 108A of the General Statutes and pursuant to Title XIX of the Social Security Act, conducted in accordance with G.S. 108A-79.1."

SECTION 2.(b) Article 4 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-79.2. Medicaid provider appeals of Department level decision.

(a) A provider of Medicaid services aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement or to deny, suspend, or revoke a provider agreement shall be entitled to a hearing. A hearing shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, "file or filing" means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed

with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.

(b) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:

(1) Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.

(2) The hearing shall be held in Wake County, except that the hearing officer may, after consideration of the numbers, locations, and convenience of witnesses and in order to promote the ends of justice, hold the hearing by telephone or other electronic means or hold the hearing in a county in which the petitioner resides.

(3) Discovery shall be no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall provide to each other party a copy of any documentary evidence that the party intends to introduce at the hearing and shall identify each witness that the party intends to call.

(4) The hearing officer shall have the power to administer oaths and affirmations, subpoena the attendance of witnesses, rule on prehearing motions, and regulate the conduct of the hearing.

(5) At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.

(6) The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.

(7) The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.

(8) The appeal hearing shall be recorded; however, no transcript will be prepared unless a petition for judicial review is filed pursuant to subsection (f) of this section, in which case the transcript shall be made a part of the official record. In the absence of the filing of a petition for a judicial review, the recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

(c) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency

as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.

(d) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to represent written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision-maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than 90 days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency decision-maker, for good cause shown, for an additional period of up to 30 days. The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.

(e) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.

(f) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control."

SECTION 3. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Medical Assistance, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year. These funds shall be used to increase the number of hearing officers in the Department to hear provider appeals under G.S. 108A-79.2, as enacted by this act, and may also be used to pay for services provided by mediation centers and legal services organizations that assist Medicaid recipients that have filed a petition with the Office of Administrative Hearings pursuant to G.S. 108A-79.1, as enacted by this act.

SECTION 4. Effective October 1, 2008, the Department of Health and Human Services shall discontinue its informal settlement process with respect to appeals by Medicaid recipients. All informal appeals by Medicaid recipients pending on that date that have not been held on the merits or for which notices have not been sent to the Medicaid applicant or recipient shall be deemed a contested case under Chapter 150B of the General Statutes pursuant to G.S. 108A-79.1 and Article 3 of Chapter 150B of the General Statutes and shall be filed with the Office of Administrative Hearings pursuant to G.S. 108A-79.1, as enacted by this act.

SECTION 5. This act becomes effective October 1, 2008, and applies to all petitions that are filed by a Medicaid provider on or after that date and for all Medicaid

provider petitions that have been filed at the Office of Administrative Hearings previous to this date but for which a hearing on the merits has not been commenced prior to the effective date of this act. The requirement that the agency decision must be rendered not more than 90 days from the date of the filing of the petition for hearing shall not apply to petitions that were filed at the Office of Administrative Hearings prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by Section 2 of this act to the Department of Health and Human Services within 30 days of the effective date of this act. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid providers under the Medical Assistance program.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 2008
PROPOSED COMMITTEE SUBSTITUTE S2008-CSRO-53 [v.13]

7/2/2008 10:51:02 PM

Short Title: Medicaid Appeals Change. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE APPEALS PROCESS FOR MEDICAID APPLICANTS AND RECIPIENTS APPEALING DEPARTMENT OF HEALTH AND HUMAN SERVICES DETERMINATIONS PERTAINING TO SERVICES UNDER THE MEDICAID PROGRAM.

Whereas, the State and Federal Medicaid costs for Community Support Services were about $500 million higher than expected in fiscal year 2006-2007, and have remained higher than anticipated despite efforts by the Department of Health and Human Services to control the program's growth and expenses; and

Whereas, the service authorization process used by the Department resulted in a number of Medicaid applicants and recipients receiving inappropriate services; and

Whereas, efforts to control costs and to provide appropriate services have resulted in the denial, termination, suspension, or reduction of Medicaid services to large numbers of applicants and recipients; and

Whereas, federal law requires that applicants and recipients be given a fair hearing before services are denied, terminated, suspended, or reduced and that hearings ordinarily be held within 90 of the request for appeal made by the applicant or recipient; and

Whereas, the Department's current informal hearing process has no time limits and formal contested cases before the Office of Administrative Hearings can take considerably longer than 90 days; and

Whereas, there is a backlog of approximately 6,956 cases awaiting informal hearing within the Department of Health and Human Services and the Department is on track to receive over 10,000 cases this year; and

Whereas, the General Assembly finds that the appeals process must be streamlined to address the substantial backlog in appeals pending and the process should be simplified to address issues of fairness; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective October 1, 2008, the Title of G.S. 108A-79 reads as rewritten:

"**§ 108A-79. ~~Appeals.~~Appeals of county level decisions.**"

SECTION 1.(b) Effective October 1, 2008, Article 4 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§108A-79.1. Appeals by Medicaid applicants and recipients of Department determinations.**

(a) General Rule. – Notwithstanding any provision of State law or rules to the contrary, this section shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this section, the phrase "adverse determination" means a determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this section, all references to an applicant or recipient include the applicant or recipient's parent, guardian, or legal representative, however, notice need only be given to a parent, guardian, or legal representative who has requested in writing to receive the notice.

(b) Informal Reconsideration Review. – At least 11 days before making a an adverse determination, the Department shall notify the applicant or recipient and the provider, if applicable, in writing of the proposed determination and of the applicant's or recipient's right to an informal reconsideration review of the proposed determination. The Department shall develop a pre-determination notice that informs the applicant or recipient of the proposed adverse determination, the basis for the proposed determination, and the process by which the applicant or recipient may request an informal reconsideration review. The Department shall send the applicant or recipient a pre-determination notice which shall state that the Department plans to make an adverse determination on a date not less than 11 days after mailing of the pre-determination notice, unless the applicant or recipient requests an informal reconsideration review. The pre-determination notice shall also state that the applicant or recipient will continue to receive Medicaid services throughout the informal reconsideration review process. The Department may use mediation services to assist with the informal reconsideration review process. If the applicant or recipient requests an informal reconsideration review within 11 days of the mailing of the pre-determination notice, the following will occur:

(1) The applicant or recipient will be given an opportunity to meet with the Department, in a place and manner designated by the Department, including by telephone, to present arguments and evidence to refute the adverse determination.

(2) The informal reconsideration review shall be completed within 60 days of the request.

(3) At the completion of the informal reconsideration review, the Department shall make a determination whether or not the applicant's or recipient's services should be denied, terminated, suspended, or reduced.

(4) If, after an informal reconsideration review, the Department makes an adverse determination, or if the applicant or recipient does not request

an informal reconsideration review within 11 days, the Department shall send a determination notice, as provided in subsection (c) of this section.

(c) Notice. – Except as otherwise provided by federal law or regulation, at least 30 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall include:

(1) An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.

(2) An explanation of what service is being denied, terminated, suspended, or reduced, and the reason for the determination.

(3) The specific regulation, statute, or medical policy that supports or requires the adverse determination.

(4) The effective date of the adverse determination.

(5) An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an Administrative Law Judge.

(6) An explanation of how the applicant or recipient can request a hearing, and a statement that the applicant or recipient may represent himself, or use legal counsel, a relative or other spokesperson.

(7) A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.

(8) An explanation of the conditions under which the services may be reinstated.

(9) The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant or recipient's questions.

(10) The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.

(11) The appeal request form described in subsection (e) of this section that the applicant or recipient may use to request a hearing.

(d) Appeals. – Except as provided by this section, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes, and a fair hearing as required by 42 U.S.C. 1396(a)(3). The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subsection (c) of this section by sending an appeal request form to the Office of Administrative Hearings and the Department. The Department shall immediately forward a copy of the notice to the

Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit or interfere with the applicant's or recipient's decision to request a hearing.

(e) Appeal Request Form. –Along with the notice required by subsection (c) of this section, the Department shall also provide the applicant or recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:

(1) A statement that in order to request an appeal, the applicant or recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.

(2) The applicant or recipient's name, address, telephone number, and Medicaid identification number.

(3) A preprinted statement that indicates that the applicant or recipient would like to appeal the specific adverse determination of which the applicant or recipient was notified in the notice.

(4) A statement informing the applicant or recipient that he or she may choose to be represented by a lawyer, a relative, a friend or other spokesperson.

(5) A space for the applicant's or recipient's signature and date.

(e) Final Decision. – After a hearing before an Administrative Law Judge, the Judge shall return the decision and record to the Department in accordance with G.S. 150B-31.2 of the General Statutes. The Department shall make a final decision in the case within 20 days of receipt of the decision of the Administrative Law Judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

SECTION 2. Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-31.2. Contested Medicaid cases.**

(a) Application. – This section applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under G.S. 108A-79.1. Notwithstanding any other provision of this Chapter, the provisions of G.S. 108A-79.1 shall govern timelines and procedural steps in a contested Medicaid case. To the extent any provision in this section conflicts with another provision in this Article, this section controls.

(b) Simple procedures. – Notwithstanding any other provision of this Article, the Chief Administrative Law Judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Hearings Division shall schedule and hear contested Medicaid cases within 45 days of submission of a request for appeal. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An Administrative Law Judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or

recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing.

(c) Mediation. – Upon receipt of an appeal request form as provided by G.S. 108A-79.1(e) or other clear request for a hearing by a Medicaid applicant or recipient, The Chief Administrative Law Judge shall immediately notify the Mediation Network of North Carolina which shall within 5 days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing. Nothing in this subsection shall restrict the right to a contested case hearing.

(d) Burden of proof. – The agency has the burden of going forward and shall present evidence to support the agency's determination to deny, terminate, suspend, or reduce services. The petitioner has the burden of proof and may present evidence to refute the agency's determination, however, the Administrative Law Judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

(e) Decision. – The Administrative Law Judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The Hearings Division shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the petitioner. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing."

SECTION 3. There is appropriated from the General Fund to the Office of Administrative Hearings the sum of three million dollars ($3,000,000) for the 2008-2009 fiscal year. These funds shall be used as follows: one million five hundred thousand dollars ($1,500,000) for mediation services; four hundred thousand dollars ($400,000) for legal services organizations that assist Medicaid recipients that requested an appeal with the Office of Administrative Hearings; and one million one hundred thousand dollars ($1,100,000) to increase the number of Administrative Law Judges and other staff necessary to implement Section 2 of this act.

SECTION 4. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Medical Assistance, the sum of two million dollars ($2,000,000) for the 2008-2009 fiscal year. These funds shall be used by the Department for staffing and other services which will be required to administer the new process under this act.

SECTION 5. Effective October 1, 2008, the Department of Health and Human Services shall discontinue its current informal appeals process. All informal appeals by Medicaid applicants or recipients under the current system which are pending on that date for which a hearing has not been held shall be discontinued and the applicant or recipient offered an opportunity to appeal to the Office of Administrative Hearings in accordance with the provisions of Section 1(b) of this act. The Department

shall comply with the provisions of Section 1(b) of this act regarding informal reconsideration review for all adverse determinations made on or after October 1, 2008.

SECTION 6. Sections 3 and 4 of this act become effective July 1, 2008. The remainder of this act becomes effective October 1, 2008, and applies to determinations to deny, terminate, suspend or reduce Medicaid services made on or after that date.

SENATE BILL 2008:
Medicaid Appeals Change

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 7, 2008
Introduced by:	Sen. Nesbitt	**Summary by:**	Karen Cochrane-Brown
Version:	PCS to First Edition S2008-CSRO--53		Staff Attorney

SUMMARY: The Proposed Committee Substitute for Senate Bill 2008 creates a new process for appeals by Medicaid applicant and recipients from adverse determinations of the Department of Health and Human Services. The new process simplifies and streamlines the administrative appeal in the Office of Administrative Hearings (OAH). The bill also appropriates funds to implement its provisions.

CURRENT LAW:

Federal law requires that Medicaid applicants and recipients be given an administrative appeal prior to termination, reduction or suspension of Medicaid covered services. Currently, the Department offers applicants and recipients a two level approach to the appeal. When the Department determines to adversely affect a person's services, it sends a notice informing the person that his or her services will be reduced, terminated or suspended in 11 days unless the person requests an informal appeal with the Department within that time or files a petition for a contested case in accordance with Chapter 150B. If the person requests an appeal in either forum within 11 days, the benefits will continue until completion of the appeal. However, if the person does not appeal within 11 days, the benefits are reduced, terminated or suspended. Chapter 150B allows an aggrieved person 60 days to commence a contested case, so if the person appeals to OAH after the 11th day but before the 60th day, the benefits are reinstated. In addition, if, after completion of the informal appeal, the Department's determination is still adverse, the person has an additional 60 days within which to appeal to OAH.

Federal regulations provide that appeals should ordinarily be completed within 90 days of the filing of the appeal. There are currently no time limits for completion of either the informal or the formal appeal and both processes often take more than 90 days. The Department currently has a backlog of approximately 6,956 cases awaiting informal hearing and is on track to receive over 10,000 cases this year.

BILL ANALYSIS:

Senate Bill 2008 creates a new simplified and streamlined process for Medicaid applicant and recipient appeals. It replaces the current two level approach with an optional pre-determination review by the Department followed by a determination notice informing the person of his or her right to appeal to OAH. The bill requires that the notice contain specific information regarding the Department's reason for the determination and also information about how to file an appeal. The notice also includes a simple appeals form which can be mailed or faxed to OAH by the applicant or recipient.

The applicant or recipient has 30 days to appeal before benefits would be adversely affected. Once the appeal is filed, the 90 day clock begins to run. OAH immediately refers the case to mediation and schedules a hearing for 45 days from receipt of the appeal. The mediator must contact the person within

5 days and complete mediation within 25 days. If mediation is successful, the appeal is dismissed. If it is unsuccessful, the mediator notifies OAH that the case will proceed to hearing. The Chief Administrative Law Judge is authorized to limit and simplify the procedures to expedite the cases. The simplified procedures may include considering all prehearing motions in the course of the hearing on the merits and making efforts to assure a fair hearing and a complete record in cases where the person is not represented by an attorney. After the hearing, OAH must send a copy of the audiotape or diskette to the agency within 5 days. The Administrative Law Judge must prepare a written decision and send it to the parties. The Judge must also send the record and decision to the agency within 20 days of conclusion of the hearing. The agency then has another 20 days to make a final decision and notify the person of the decision and of his or her right to seek judicial review of the decision.

The bill appropriates $3,000,000 to the Office of Administrative Hearing to implement the act. $1,500,000 is to be used for mediation services; $400,000 for legal services for Medicaid recipients, and $1,100,000 is to be used to increase the number of Administrative Law Judges and other OAH staff.

The bill further appropriates $2,000,000 to the Department of Health and Human Services for staffing and other services needed to administer the new process under the act.

Finally, the bill directs the Department to discontinue its current informal process, effective October 1, 2008, and to offer applicants and recipients in all pending cases in which no hearing has been held an opportunity to appeal to OAH in accordance with this act. The new pre-determination review process will become effective for all adverse determinations made on or after October 1, 2008.

EFFECTIVE DATE:

The appropriations become effective July 1, 2008. The remainder of the act becomes effective October 1, 2008, and applies to determinations to deny, terminate, suspend or reduce Medicaid services made on or after that date.

S2008e1-SMRO-CSRO--53

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1113

Short Title:	State Tort Claims/Public Duty Doctrine.	(Public)
Sponsors:	Representatives Glazier, Faison (Primary Sponsors); and Harrison.	
Referred to:	Judiciary II.	

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN AFFIRMATIVE DEFENSE FOR CIVIL ACTIONS UNDER THE STATE TORT CLAIMS ACT TO THOSE CLAIMS IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF THE ALLEGED NEGLIGENT FAILURE OF LAW ENFORCEMENT TO PROTECT CLAIMANTS FROM THE MISCONDUCT OF OTHERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.**

The public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which the claim is asserted if and only if the injury of the claimant is the result of the alleged negligent failure of law enforcement to protect the claimant from the misconduct of others."

SECTION 2. This act is effective when it becomes law and applies to judgments entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1113
PROPOSED SENATE COMMITTEE SUBSTITUTE H1113-CSST-108 [v.17]

7/3/2008 9:54:57 AM

Short Title: State Tort Claims/Public Duty Doctrine. (Public)

Sponsors:

Referred to:

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN AFFIRMATIVE DEFENSE FOR CLAIMS UNDER THE STATE TORT CLAIMS ACT IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF THE ALLEGED NEGLIGENT FAILURE OF CERTAIN PARTIES TO PROTECT CLAIMANTS FROM THE ACTION OF OTHERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.**

(a) Except as provided in subsection (b) of this section, the public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which a claim is asserted if and only if the injury of the claimant is the result of any of the following:

(1) The alleged negligent failure to protect the claimant from the action of others or from an act of God by a law enforcement officer as defined in subsection (d) of this section.

(2) The alleged negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health or safety inspection required by statute.

(b) Notwithstanding subsection (a) of this section, the affirmative defense of the public duty doctrine may not be asserted in any of the following instances:

(1) Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.

(2) When the State, through its officers, employees, involuntary servants or agents, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.

(3) Where the alleged failure to perform a health or safety inspection required by statute was the result of gross negligence.

(c) Nothing in this section shall limit the assertion of the public duty doctrine as an affirmative defense on the part of a unit of local government or its officers, employees, or agents.

(d) For purposes of this section, "law enforcement officer" means a full-time or part-time employee or agent of a State department, institution, or agency or an agent of the State operating under an agreement with a State department, institution, or agency State who is any of the following:

(1) Actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes.

(2) Possesses the power of arrest by virtue of an oath administered under the authority of the State.

(3) Is a juvenile justice officer, chief court counselor, or juvenile court counselor.

(4) Is a correctional officer performing duties of custody, supervision, and treatment to control and rehabilitate criminal offenders.

(5) Is a fire fighter as defined in G.S. 113-60.32(1).

(6) Is a probation officers appointed under Article 20 of Chapter 15 of the General Statutes."

SECTION 2. This act is effective October 1, 2008, and applies to claims arising on or after that date.

HOUSE BILL 1113:
State Tort Claims/Public Duty Doctrine

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	June 30, 2008
Introduced by:	Reps. Glazier, Faison	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1113-CSST-108v11		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1113 would allow the use of the public duty doctrine as an affirmative defense to claims under the State Tort Claims Act in certain instances.***

CURRENT LAW: Article 31 of Chapter 143, Tort Claims against State Departments and Agencies ("the State Tort Claims Act") provides the statutory framework for an individual to sue the state for the negligent actions of an employee of the State. Generally, the common law rule of "sovereign immunity" provides the State is immune from suit. The State Tort Claims Act partially waives sovereign immunity, allowing individuals to sue the State for injuries proximately caused by the negligent actions of a State employee acting within the scope of his or her employment.

The "public duty doctrine" is a common law rule that limits tort liability when the State owes a duty to the general public. Generally, if the State owes a duty to the general public, an individual cannot enforce the duty in tort. There are two exceptions to the public duty doctrine:

1. Where there is special relationship between the injured party and the governmental entity.
2. When the governmental entity creates a special duty by promising protection to an individual, the protection is not given, and the individual's reliance on the promised protection proximately caused the injury suffered.

The public duty doctrine is an affirmative defense to a claim of negligence. An "affirmative defense" must be plead, otherwise it is considered waived.

The North Carolina courts have applied the public duty doctrine to "law enforcement departments when they are exercising their general duty to protect the public" and to State agencies required by statute to conduct inspections for the public's general protection.

The only statutory defense provided in the Torts Claim Act itself is the defense of contributory negligence. G.S. 143-299.1.

BILL ANALYSIS:

The pcs for House Bill 1113 codifies that the **public duty doctrine <u>may</u> be asserted** as an affirmative defense only in claims of injury in the following two instances:

1. As the result of the negligent failure of law enforcement or fire fighter to protect the claimant from the action of others.
   - ➢ <u>Law enforcement officers</u> are defined as "means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State." G.S. 143-166.30(a)(4).

- Fire fighters are defined as "an employee of the Division of Forest Resources of the Department of Environment and Natural Resources who engages in fire suppression duties." G.S. 116-60.32(1).
- Probation officers appointed under Article 20 of Chapter 15 of the General Statutes.

2. As the result of the negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health and safety inspection required by statute.

The pcs specifically states three instances in which the **public duty doctrine may not be asserted**:

1. Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.
2. When the State, through its officer, employee, involuntary servant or agent of the State, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.
3. Where the alleged failure to perform a health and safety inspection required by statute was the result of gross negligence.

EFFECTIVE DATE: October 1, 2008, and applies to claims arising on or after that date.

BACKGROUND: The public duty doctrine began in North Carolina in a 1991 case involving a lawsuit, not under the Tort Claims Act, but against a sheriff. In *Braswell v. Braswell*, the son of a woman killed by her husband sued the husband and also named the sheriff for negligence in not protecting his mother. The NC Supreme Court ruled that the common law public duty doctrine recognized that a local government has a duty of law enforcement to protect the public, and because of its limited resources in doing so cannot be liable for failure to furnish protection for specific individuals. The court recognized the special relationship and special duty exceptions to the doctrine.

In 1998, the Supreme Court applied the public duty doctrine to two cases under the State Tort Claims Act. One, *Stone v. NC Department of Labor*, arose out of the famous 1991 fire in the chicken processing plant in Hamlet. The plaintiffs, the injured and the estates of the dead from that fire, sought damages from the Department for failure to inspect the plant for adequate fire exits. The other, *Hunt v. NC Dept. of Labor*, arose out of an injury from an amusement ride that the Department had inspected and declared safe. Using the same reasoning as in *Braswell*, the sheriff case, the Court said the public duty doctrine shielded the Department from liability.

In 2000, the Supreme Court decided not to apply the public duty doctrine in a non-Tort Claims case, *Lovelace v. City of Shelby*, against the city for negligence of its 911 operator in directing firefighters to a fire. Justice Robert Orr, who had dissented in the Stone and Hunt cases, wrote the opinion and made it clear he thought the *Braswell* case should have been limited to its facts.

After a series of decisions in the NC Court of Appeals which followed Lovelace's limited view of the public duty doctrine, the NC Supreme Court revisited the doctrine in 2006 in *Myers v. McGrady*. There, Justice William Wainwright applied the public duty doctrine to shield the Division of Forest Services against a claim under the Tort Claims Act that it failed to warn motorists of the reduced visibility from a forest fire that resulted in an accident. The court said the Division's duty was to the general duty, and there was not special duty to the motorists.

The most recent Supreme Court decision involving the public duty doctrine occurred last month in *Multiple Claimants v NC DHHS*, in which the Department was held liable for negligent failure in its inspection of the Mitchell County jail, where a fire resulted in injury and death. Justice Patricia Timmons-Goodson ruled that the duty of DHHS to inspect the jail fell into the "special relationship" exception because the statute that said the Dept was to inspect the jail said it was for the benefit of the prisoners, rather than for the general public.

Some commentators have asserted that some of the court cases are inconsistent, and that many of them threaten to wipe out the decision of the General Assembly in 1951 to waive sovereign immunity through the Tort Claims Act. A 2006 Campbell Law Review article called for the Supreme Court to totally abrogate the doctrine.

HOUSE BILL 1113:
State Tort Claims/Public Duty Doctrine

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 3, 2008
Introduced by:	Reps. Glazier, Faison	**Summary by:**	R. Erika Churchill
Version:	PCS to First Edition H1113-CSST-108v17		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1113 would allow the use of the public duty doctrine as an affirmative defense to claims under the State Tort Claims Act in certain instances.***

CURRENT LAW: Article 31 of Chapter 143, Tort Claims against State Departments and Agencies ("the State Tort Claims Act") provides the statutory framework for an individual to sue the state for the negligent actions of an employee of the State. Generally, the common law rule of "sovereign immunity" provides the State is immune from suit. The State Tort Claims Act partially waives sovereign immunity, allowing individuals to sue the State for injuries proximately caused by the negligent actions of a State employee acting within the scope of his or her employment.

The "public duty doctrine" is a common law rule that limits tort liability when the State owes a duty to the general public. Generally, if the State owes a duty to the general public, an individual cannot enforce the duty in tort. There are two exceptions to the public duty doctrine:

1. Where there is special relationship between the injured party and the governmental entity.
2. When the governmental entity creates a special duty by promising protection to an individual, the protection is not given, and the individual's reliance on the promised protection proximately caused the injury suffered.

The public duty doctrine is an affirmative defense to a claim of negligence. An "affirmative defense" must be plead, otherwise it is considered waived.

The North Carolina courts have applied the public duty doctrine to "law enforcement departments when they are exercising their general duty to protect the public" and to State agencies required by statute to conduct inspections for the public's general protection.

The only statutory defense provided in the Torts Claim Act itself is the defense of contributory negligence. G.S. 143-299.1.

BILL ANALYSIS:

The pcs for House Bill 1113 codifies that the **public duty doctrine <u>may</u> be asserted** as an affirmative defense only in claims of injury in the following two instances:

1. As the result of the negligent failure of a law enforcement officer to protect the claimant from the action of others or an act of God.
    - A law enforcement officer is defined as a full-time or part-time employee or agent of a State department, institution, or agency or an agent of the State operating under an agreement with a State department, institution, or agency who is any of the following:
        1. Actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general

enforcement of the criminal laws of the State or serving civil processes.
2. Possesses the power of arrest by virtue of an oath administered under the authority of the State.
3. Is a juvenile justice officer, chief court counselor, or juvenile court counselor.
4. Is a correctional officer performing duties of custody, supervision, and treatment to control and rehabilitate criminal offenders.
5. Is a fire fighter as defined in G.S. 113-60.32(1).
6. Is a probation officers appointed under Article 20 of Chapter 15 of the General Statutes.

2. As the result of the negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health and safety inspection required by statute.

The pcs specifically states three instances in which the **public duty doctrine may not be asserted**:

1. Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.
2. When the State, through its officer, employee, involuntary servant or agent of the State, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.
3. Where the alleged failure to perform a health and safety inspection required by statute was the result of gross negligence.

The pcs engrosses the amendment approved by the committee on Tuesday, July 1, and specifically states that the assertion of the public duty doctrine as an affirmative defense by units of local government is not limited by the statute.

EFFECTIVE DATE: October 1, 2008, and applies to claims arising on or after that date.

BACKGROUND: The public duty doctrine began in North Carolina in a 1991 case involving a lawsuit, not under the Tort Claims Act, but against a sheriff. In *Braswell v. Braswell*, the son of a woman killed by her husband sued the husband and also named the sheriff for negligence in not protecting his mother. The NC Supreme Court ruled that the common law public duty doctrine recognized that a local government has a duty of law enforcement to protect the public, and because of its limited resources in doing so cannot be liable for failure to furnish protection for specific individuals. The court recognized the special relationship and special duty exceptions to the doctrine.

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fire. Justice Robert Orr, who had dissented in the Stone and Hunt cases, wrote the opinion and made it clear he thought the *Braswell* case should have been limited to its facts.

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Some commentators have asserted that some of the court cases are inconsistent, and that many of them threaten to wipe out the decision of the General Assembly in 1951 to waive sovereign immunity through the Tort Claims Act. A 2006 Campbell Law Review article called for the Supreme Court to totally abrogate the doctrine.

Heather Fennell and Bill Gilkeson substantially contributed to this summary.
H1113e1-SMST-CSST-108v17

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

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E. Betty TURNER	BAC
Brandy Bynum	Action for Children NC
Mandy Ablendinger	"
Sara Riggins	NCDOL
John Haaman	NCDOL
David Crawford	AIA NC
DANIEL BAUM	K+L GATES
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Boyd Cauble	City of Charlotte
ANTHONY ALLISON	NCAEC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 3, 2008

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Will Polk	Office of Lt. Gov.
BOB ORR	PERSONAL
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Deborah S. Ussery	R. Cloud & Assoc.
Gary Saltzman	GSL
FRANK FOLGER	SDD WICKER
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Ardis Watkins	SEANC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 3, 2008

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Shannon Hanes	DJJDP
TARA LARSON	DMA DHHS
Dempsey Benton	DHHS
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[illegible]	DHHS
[illegible]	NC ABC
[illegible]	NCDOT
Cady Thomas	NCAR
Scott Allen	NCREC
Jessica Pearce	NCREC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

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Julian Mann	OAH
Bill Rowe	NC Justice Center
John Maby	GovOthics
Jordan Schrader	pnjr
Thom Mansfield	NC Medical Board
Christina Appleton	NCMB
Andy Romanet	NCLM
Lance Hamer	NCDOC
Sandy Sanders	NCSR
W. H. Potter Jr	NCDS & NCTA

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — July 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

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Amy McConkey	Smith Anderson
W. Daniel Ambern	ElectriCities of N.C., Inc.
Derek Wagner	Atty Gen. Office
Tina Hlabse	NCDOT
Heather Freeman	NC DOT
Jody Miner	Mediation Network
Janice Almond	Mediation Network

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — July 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Brooks	University Health Systems of Eastern NC
Steve Keene	NC Medical Society
Andy Vanore	Gov's Office
Franklin Freeman	" "
Karen McL	CFSA-NC
Tracy Little	NC DOC

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

July 8, 2008

MINUTES

The Senate Judiciary I (Civil) Committee met Tuesday, July 8, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 10:12 a.m..

In attendance were Chairman Nesbitt, Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Vice Chairman R. C. Soles, Senator Julia Boseman, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator Janet Cowell, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Vernon Malone, Senator Floyd McKissick, Senator Tony Rand, Senator Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw and Hall Pell. Research assistant Denise Huntley and Committee assistant Jessica Kozma Bennett were also present.

Senate Bill 2008
Medicaid Appeals Change

Chairman Nesbitt, sponsor of Senate Bill 2008, asked Vice Chairman Clodfelter to chair the meeting while his bill was discussed, of which Vice Chairman Clodfelter obliged him. ***A Proposed Committee Substitute was distributed to members and adopted by unanimous vote for discussion by a motion by Chairman Nesbitt.*** Vice Chairman Clodfelter recognized Health and Human Resources Secretary Dempsey Benton to speak to the bill. Legislative counsel Karen Cochrane Brown was then recognized and asked to speak at the podium.

Ms. Brown explained the committee that there was one "significant" difference in the PCS, on page 4, line 5. Chairman Nesbitt then spoke to the bill, saying that the current Medicaid review system was not capable to handle an increase in claims, Chairman Nesbitt continued. Vice Chairman Clodfelter noted the importance of the bill and asked Secretary Benton to come forward.

Secretary Benton thanked the Vice Chairman and agreed that the bill was important, addressing the issue in a "balanced" way. He said that the bill changed window of time for the appeal to 30 days, but noted that he felt 20 days was a reasonable amount of time. The bill outlines three steps, reconsideration, mediation and OAH hearing.

Vice Chairman Clodfelter said that the bill would not be voted on today so the committee could hear and consider all suggestions. Chairman Nesbitt then said that the bill works to streamline the process. Senator Berger then was recognized and asked about a technical correction in the bill, what happens to benefits when time period lapses. Chairman Nesbitt said that when a person is denied they do not receive benefits through the appeals process. Senator Berger followed up asking how much money would be appropriated and how would the money be distributed. Chairman Nesbitt said the money would be given to Judge Mann to distribute to centers across the state.

Senator Tillman was recognized and said that closing the window of appeals' time from 60 to 30 days was too extreme. With little discussion Chairman Nesbitt said he wanted to hear the bill again in committee.

Senate Bill 2064

Chairman Nesbitt called on Senator Rand to speak to Senate Bill 2064, a bill that would create an "open government unit" of the department of justice, establish a fee for services of moderation and to ensure that the successful plaintiff in a public records dispute is entitled to reasonable attorney's fees.

A PCS was distributed to members and moved for adoption by Senator Tillman. The motion carried by unanimous vote. Chairman Nesbitt called on Senator Brunstetter, who asked if the legislature had previously worked on this subject. Ms. McGraw said that there had been work in 2005. Chairman Nesbitt then called on Senator Clodfelter who said he sponsored legislation in 2005 and that there was a heavy burden for plaintiffs to recover attorney's fees. Senator Clodfelter offered an amendment on Page 1, Lines 3-6, which leaves the original language of the 2005 legislation in the bill.

Discussed ensued regarding the amendment.

Senator Rand was recognized and said he opposed the amendment, saying the amendment "goes against what the bill is trying to do."

Members of the audience were called for comment.

John Bussian with the North Carolina Press Association noted that there were three lawsuits since the 2005 change. Jim Blackburn, representing the North Carolina Association of County Commissioners spoke for the amendment. Martha McConnell with the Charlotte Hospital System said that standard is appropriate.

Moving back to the committee, Senator Soles said he did not support the amendment. Senator Tillman was recognized and said that the great equalizer is that a plaintiff would have to prevail before recovering attorney fees.

Senator Clodfelter moved for adoption of the amendment. The motion failed.

Chairman Nesbitt noted that the bill would be re-referred to finance. Senator Rand motioned for favorable report, unfavorable as to original bill. Motion carries by unanimous vote. The meeting was adjourned at 10:57 p.m.

Respectfully submitted

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 2008
PROPOSED COMMITTEE SUBSTITUTE S2008-CSRO-53 [v.15]

7/7/2008 11:23:19 PM

Short Title: Medicaid Appeals Change. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE APPEALS PROCESS FOR MEDICAID APPLICANTS AND RECIPIENTS APPEALING DEPARTMENT OF HEALTH AND HUMAN SERVICES DETERMINATIONS PERTAINING TO SERVICES UNDER THE MEDICAID PROGRAM.

Whereas, the State and Federal Medicaid costs for Community Support Services were about $500 million higher than expected in fiscal year 2006-2007, and have remained higher than anticipated despite efforts by the Department of Health and Human Services to control the program's growth and expenses; and

Whereas, the service authorization process used by the Department resulted in a number of Medicaid applicants and recipients receiving inappropriate services; and

Whereas, efforts to control costs and to provide appropriate services have resulted in the denial, termination, suspension, or reduction of Medicaid services to large numbers of applicants and recipients; and

Whereas, federal law requires that applicants and recipients be given a fair hearing before services are denied, terminated, suspended, or reduced and that hearings ordinarily be held within 90 of the request for appeal made by the applicant or recipient; and

Whereas, the Department's current informal hearing process has no time limits and formal contested cases before the Office of Administrative Hearings can take considerably longer than 90 days; and

Whereas, there is a backlog of approximately 6,956 cases awaiting informal hearing within the Department of Health and Human Services and the Department is on track to receive over 10,000 cases this year; and

Whereas, the General Assembly finds that the appeals process must be streamlined to address the substantial backlog in appeals pending and the process should be simplified to address issues of fairness; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective October 1, 2008, the Title of G.S. 108A-79 reads as rewritten:

"**§ 108A-79. ~~Appeals.~~Appeals of county level decisions.**"

SECTION 1.(b) Effective October 1, 2008, Article 4 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§108A-79.1. Appeals by Medicaid applicants and recipients of Department determinations.**

(a) General Rule. – Notwithstanding any provision of State law or rules to the contrary, this section shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this section, the phrase "adverse determination" means a determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this section, all references to an applicant or recipient include the applicant or recipient's parent, guardian, or legal representative, however, notice need only be given to a parent, guardian, or legal representative who has requested in writing to receive the notice.

(b) Informal Reconsideration Review. – At least 11 days before making a an adverse determination, the Department shall notify the applicant or recipient and the provider, if applicable, in writing of the proposed determination and of the applicant's or recipient's right to an informal reconsideration review of the proposed determination. The Department shall develop a pre-determination notice that informs the applicant or recipient of the proposed adverse determination, the basis for the proposed determination, and the process by which the applicant or recipient may request an informal reconsideration review. The Department shall send the applicant or recipient a pre-determination notice which shall state that the Department plans to make an adverse determination on a date not less than 11 days after mailing of the pre-determination notice, unless the applicant or recipient requests an informal reconsideration review. The pre-determination notice shall also state that the applicant or recipient will continue to receive Medicaid services throughout the informal reconsideration review process. The Department may use mediation services to assist with the informal reconsideration review process. If the applicant or recipient requests an informal reconsideration review within 11 days of the mailing of the pre-determination notice, the following will occur:

(1) The applicant or recipient will be given an opportunity to meet with the Department, in a place and manner designated by the Department, including by telephone, to present arguments and evidence to refute the adverse determination.

(2) The informal reconsideration review shall be completed within 60 days of the request.

(3) At the completion of the informal reconsideration review, the Department shall make a determination whether or not the applicant's or recipient's services should be denied, terminated, suspended, or reduced.

(4) If, after an informal reconsideration review, the Department makes an adverse determination, or if the applicant or recipient does not request

an informal reconsideration review within 11 days, the Department shall send a determination notice, as provided in subsection (c) of this section.

(c) Notice. – Except as otherwise provided by federal law or regulation, at least 30 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall include:

(1) An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.

(2) An explanation of what service is being denied, terminated, suspended, or reduced, and the reason for the determination.

(3) The specific regulation, statute, or medical policy that supports or requires the adverse determination.

(4) The effective date of the adverse determination.

(5) An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an Administrative Law Judge.

(6) An explanation of how the applicant or recipient can request a hearing, and a statement that the applicant or recipient may represent himself, or use legal counsel, a relative or other spokesperson.

(7) A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.

(8) The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant or recipient's questions.

(9) The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.

(10) The appeal request form described in subsection (e) of this section that the applicant or recipient may use to request a hearing.

(d) Appeals. – Except as provided by this section, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes, and a fair hearing as required by 42 U.S.C. 1396(a)(3). The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subsection (c) of this section by sending an appeal request form to the Office of Administrative Hearings and the Department. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative

Hearings may dispose of the records after one year. The Department may not influence, limit or interfere with the applicant's or recipient's decision to request a hearing.

(e) Appeal Request Form. –Along with the notice required by subsection (c) of this section, the Department shall also provide the applicant or recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:

(1) A statement that in order to request an appeal, the applicant or recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.

(2) The applicant or recipient's name, address, telephone number, and Medicaid identification number.

(3) A preprinted statement that indicates that the applicant or recipient would like to appeal the specific adverse determination of which the applicant or recipient was notified in the notice.

(4) A statement informing the applicant or recipient that he or she may choose to be represented by a lawyer, a relative, a friend or other spokesperson.

(5) A space for the applicant's or recipient's signature and date.

(e) Final Decision. – After a hearing before an Administrative Law Judge, the Judge shall return the decision and record to the Department in accordance with G.S. 150B-31.2 of the General Statutes. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the Administrative Law Judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

SECTION 2. Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-31.2. Contested Medicaid cases.**

(a) Application. – This section applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under G.S. 108A-79.1. Notwithstanding any other provision of this Chapter, the provisions of G.S. 108A-79.1 shall govern timelines and procedural steps in a contested Medicaid case commenced in accordance with G.S. 108A-79.1. To the extent any provision in this section conflicts with another provision in this Article, this section controls.

(b) Simple procedures. – Notwithstanding any other provision of this Article, the Chief Administrative Law Judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Hearings Division shall schedule and hear contested Medicaid cases within 45 days of submission of a request for appeal. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An Administrative Law Judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or

recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing.

(c) Mediation. – Upon receipt of an appeal request form as provided by G.S. 108A-79.1(e) or other clear request for a hearing by a Medicaid applicant or recipient, The Chief Administrative Law Judge shall immediately notify the Mediation Network of North Carolina which shall within 5 days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing. Nothing in this subsection shall restrict the right to a contested case hearing.

(d) Burden of proof. –The party proposing that the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought. The party seeking to impose a penalty or reduce, terminate or suspend a benefit previously granted has the burden of showing the propriety of such action. The party with the burden of proof on any issue has the burden of going forward and the Administrative Law Judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

(e) Decision. – The Administrative Law Judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The Hearings Division shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing."

SECTION 3. There is appropriated from the General Fund to the Office of Administrative Hearings the sum of three million dollars ($3,000,000) for the 2008-2009 fiscal year. These funds shall be used as follows: one million five hundred thousand dollars ($1,500,000) for mediation services; four hundred thousand dollars ($400,000) for legal services organizations that assist Medicaid recipients that requested an appeal with the Office of Administrative Hearings; and one million one hundred thousand dollars ($1,100,000) to increase the number of Administrative Law Judges and other staff necessary to implement Section 2 of this act.

SECTION 4. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Medical Assistance, the sum of two million dollars ($2,000,000) for the 2008-2009 fiscal year. These funds shall be used by the Department for staffing and other services which will be required to administer the new process under this act.

SECTION 5. Effective October 1, 2008, the Department of Health and Human Services shall discontinue its current informal appeals process for Medicaid applicants and recipients appealing a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. All such informal appeals by Medicaid applicants or recipients under the current system which are pending on that

date and for which a hearing has not been held shall be discontinued and the applicant or recipient offered an opportunity to appeal to the Office of Administrative Hearings in accordance with the provisions of Section 1(b) of this act. The Department shall comply with the provisions of Section 1(b) of this act regarding informal reconsideration review for all adverse determinations made on or after October 1, 2008.

SECTION 6. Sections 3 and 4 of this act become effective July 1, 2008. The remainder of this act becomes effective October 1, 2008, and applies to determinations to deny, terminate, suspend or reduce Medicaid services made on or after that date.

SENATE BILL 2008:
Medicaid Appeals Change

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 7, 2008
Introduced by:	Sen. Nesbitt	**Summary by:**	Karen Cochrane-Brown
Version:	PCS to First Edition S2008-CSRO--53		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 2008 creates a new process for appeals by Medicaid applicant and recipients from adverse determinations of the Department of Health and Human Services. The new process simplifies and streamlines the administrative appeal in the Office of Administrative Hearings (OAH). The bill also appropriates funds to implement its provisions.***

CURRENT LAW:

Federal law requires that Medicaid applicants and recipients be given an administrative appeal prior to termination, reduction or suspension of Medicaid covered services. Currently, the Department offers applicants and recipients a two level approach to the appeal. When the Department determines to adversely affect a person's services, it sends a notice informing the person that his or her services will be reduced, terminated or suspended in 11 days unless the person requests an informal appeal with the Department within that time or files a petition for a contested case in accordance with Chapter 150B. If the person requests an appeal in either forum within 11 days, the benefits will continue until completion of the appeal. However, if the person does not appeal within 11 days, the benefits are reduced, terminated or suspended. Chapter 150B allows an aggrieved person 60 days to commence a contested case, so if the person appeals to OAH after the 11th day but before the 60th day, the benefits are reinstated. In addition, if, after completion of the informal appeal, the Department's determination is still adverse, the person has an additional 60 days within which to appeal to OAH.

Federal regulations provide that appeals should ordinarily be completed within 90 days of the filing of the appeal. There are currently no time limits for completion of either the informal or the formal appeal and both processes often take more than 90 days. The Department currently has a backlog of approximately 6,956 cases awaiting informal hearing and is on track to receive over 10,000 cases this year.

BILL ANALYSIS:

Senate Bill 2008 creates a new simplified and streamlined process for Medicaid applicant and recipient appeals. It replaces the current two level approach with an optional pre-determination review by the Department followed by a determination notice informing the person of his or her right to appeal to OAH. The bill requires that the notice contain specific information regarding the Department's reason for the determination and also information about how to file an appeal. The notice also includes a simple appeals form which can be mailed or faxed to OAH by the applicant or recipient.

The applicant or recipient has 30 days to appeal before benefits would be adversely affected. Once the appeal is filed, the 90 day clock begins to run. OAH immediately refers the case to mediation and schedules a hearing for 45 days from receipt of the appeal. The mediator must contact the person within

5 days and complete mediation within 25 days. If mediation is successful, the appeal is dismissed. If it is unsuccessful, the mediator notifies OAH that the case will proceed to hearing. The Chief Administrative Law Judge is authorized to limit and simplify the procedures to expedite the cases. The simplified procedures may include considering all prehearing motions in the course of the hearing on the merits and making efforts to assure a fair hearing and a complete record in cases where the person is not represented by an attorney. After the hearing, OAH must send a copy of the audiotape or diskette to the agency within 5 days. The Administrative Law Judge must prepare a written decision and send it to the parties. The Judge must also send the record and decision to the agency within 20 days of conclusion of the hearing. The agency then has another 20 days to make a final decision and notify the person of the decision and of his or her right to seek judicial review of the decision.

The bill appropriates $3,000,000 to the Office of Administrative Hearing to implement the act. $1,500,000 is to be used for mediation services; $400,000 for legal services for Medicaid recipients, and $1,100,000 is to be used to increase the number of Administrative Law Judges and other OAH staff.

The bill further appropriates $2,000,000 to the Department of Health and Human Services for staffing and other services needed to administer the new process under the act.

Finally, the bill directs the Department to discontinue its current informal process, effective October 1, 2008, and to offer applicants and recipients in all pending cases in which no hearing has been held an opportunity to appeal to OAH in accordance with this act. The new pre-determination review process will become effective for all adverse determinations made on or after October 1, 2008.

EFFECTIVE DATE:

The appropriations become effective July 1, 2008. The remainder of the act becomes effective October 1, 2008, and applies to determinations to deny, terminate, suspend or reduce Medicaid services made on or after that date.

S2008e1-SMRO-CSRO--53

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 2064
PROPOSED COMMITTEE SUBSTITUTE S2064-CSTC-72 [v.1]

7/2/2008 4:29:25 PM

Short Title: Open Government Act. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OPEN GOVERNMENT UNIT OF THE DEPARTMENT OF JUSTICE, TO ESTABLISH A FEE FOR SERVICES OF MODERATION AND MEDIATION BY THE OPEN GOVERNMENT UNIT, AND TO PROVIDE THAT THE SUCCESSFUL PLAINTIFF IN A PUBLIC RECORDS DISPUTE IS ENTITLED TO REASONABLE ATTORNEY'S FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Open Government Unit.

"**§ 114-51. Open Government Unit.**

(a) To further the goals of government transparency and that public records, as defined by G.S. 132-1, compiled by agencies of North Carolina government or its subdivisions are the property of the people, there is created within the Department of Justice the Open Government Unit.

(b) The Open Government Unit shall do all of the following:

(1) Develop and implement education and awareness programs designed to educate the public and government agencies of their rights and responsibilities under the public records and open meetings laws.

(2) Serve as a moderator or mediator in resolving public record and open meeting issues between parties, including adopting procedures and guidelines for assisting in the informal resolution of open government disputes and issuing advisory opinions.

(3) Assemble and maintain a collection of relevant State laws, opinions, rules, and regulations related to public records and open meetings laws, which shall be made available electronically as a resource.

(4) Report annually to the General Assembly on its activities generally on the subject of open government as appropriate.

(5) Adopt and develop policies and procedures as may be necessary to accomplish these functions.

(c) A reasonable fee shall be charged for services of moderation or mediation in resolving public record and open meeting issues by the Open Government Unit of the Department of Justice. The fee authorized by this section shall not exceed the actual cost of preparing, researching and conducting the moderation or mediation. The fee for moderation or mediation services is a departmental receipt of the Department and must be used to offset the cost of the Open Government Unit.

(d) This section shall not apply to the General Assembly or the Judicial Department."

SECTION 2. During the 2008-2009 fiscal year the Department of Justice Open Government Unit shall receive and attempt to informally resolve disputes between the public and more than 430 State and local government agencies, along with educating and raising awareness among the public and governmental agency representatives about the rights and responsibilities under the public records and open meetings laws.

SECTION 3. G.S. 132-9(c) reads as rewritten:

"(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow the prevailing party to recover its reasonable attorneys' fees if attributed to those public ~~records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.~~records.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed."

SECTION 4. Section 3 of this act becomes effective October 1, 2008, and applies to actions brought on or after that date. The remainder of this act becomes effective when it becomes law.

S 1

SENATE BILL 2064

Short Title:	Open Government Act.	(Public)
Sponsors:	Senators Hoyle; and Bingham.	
Referred to:	Appropriations/Base Budget.	

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OPEN GOVERNMENT UNIT OF THE DEPARTMENT OF JUSTICE, TO APPROPRIATE FUNDS FOR THAT PURPOSE, AND TO PROVIDE THAT THE SUCCESSFUL PLAINTIFF IN A PUBLIC RECORDS DISPUTE IS ENTITLED TO REASONABLE ATTORNEY'S FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Open Government Unit.

"**§ 114-51. Open Government Unit.**

(a) To further the goals of government transparency and that public records compiled by agencies of North Carolina government or its subdivisions are the property of the people, there is created within the Department of Justice the Open Government Unit.

(b) The Open Government Unit shall:

(1) Develop and implement education and awareness programs designed to educate the public and government agencies of their rights and responsibilities under the public records and open meetings laws;

(2) Serve as a moderator/mediator in resolving public record and open meeting issues between parties, including adopting procedures and guidelines for assisting in the informal resolution of open government disputes and issuing advisory opinions;

(3) Assemble and maintain a collection of relevant State laws, opinions, rules, and regulations related to public records and open meetings laws, which shall be made available electronically as a resource;

(4) Report annually to the General Assembly on its activities generally on the subject of open government as appropriate; and

(5) Adopt and develop policies and procedures as may be necessary to accomplish these functions."

SECTION 2.(a) There is appropriated from the General Fund to the Department of Justice the sum of four hundred twelve thousand five hundred twenty-one dollars ($412,521) for fiscal year 2008-2009 to establish and fund the Open Government Unit. These funds shall be utilized to support two Attorney III positions, one Attorney II position and one Paralegal II position to carry out the functions of this Unit.

SECTION 2.(b) During the 2008-2009 fiscal year the Department of Justice Open Government Unit shall receive and attempt to informally resolve disputes between the public and 430 plus State and local government agencies, along with educating and raising awareness among the public and governmental agency representatives about the rights and responsibilities under the public records and open meetings laws.

SECTION 3. G.S. 132-9(c) reads as rewritten:

"(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow the prevailing party to recover its reasonable attorneys' fees if attributed to those public ~~records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.~~ Records.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed."

SECTION 4. This act becomes effective July 1, 2008, but Section 3 only applies to actions brought on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. _____ DATE _____

S. B. No. 2064 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S2064-CSTC-72[6]

Rep.)
Sen.) _____

moves to amend the bill on page 1, line 3-6

(✓) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"OF JUSTICE, AND TO ESTABLISH A FEE FOR SERVICES OF MODERATION AND MEDIATION BY THE OPEN GOVERNMENT UNIT.",

and on page 2, lines 18-34, by rewriting those lines to read:

"SECTION 3. This act becomes".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 2064: Open Government Act

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 2, 2008
Introduced by:	Sen. Hoyle	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S2064-CSTC		Committee Counsel

SUMMARY: The PCS for Senate Bill 2064 would:

- ***Create a new unit in the Department of Justice as designated the Open Government Unit. The Unit would be responsible for education and mediation of public records and open meeting laws issues and maintenance of a collection of relevant laws and regulations.***
- ***Amend G.S. 132-9 to provide that reasonable attorneys' fees must be awarded to the prevailing party in an action to compel disclosure of public records, if attributable to those public records.***

The PCS makes the following changes:

- ***Clarifies the definition of public records.***
- ***Removes an appropriation for the 2008-2009 fiscal year.***
- ***Inserts a fee requirement for moderation and mediation services by the Open Government Unit.***
- ***Clarifies that the section establishing the Open Government Unit shall not apply to the General Assembly or the Judicial Department.***
- ***Changes the effective date from July 1, 2008 to October 1, 2008 for Section 3, and effective when it becomes law for the remainder of the bill.***

CURRENT LAW: Chapter 132 (Public Records) defines public records in G.S. 132-1 as "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions." G.S 132-1 states that public records complied by the agencies of North Carolina government or its subdivisions are the property of the people. Chapter 132 also clarifies what constitutes confidential information not subject to public disclosure.

G.S. 132-9 provides for judicial process for individuals denied access to public records. In an action brought pursuant to that section, if a party successfully compels the disclosure of public records, the court shall allow the prevailing party to recover reasonable attorney fees if attributed to those public records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.

Article 33C (Meetings of Public Bodies) of Chapter 143 provides that all official meetings of pubic bodies be open to the public, subject to certain statutory exceptions.

BILL ANALYSIS: The PCS for SB 2064 would do the following:

Section 1: Create a new Article in Chapter 114 (Department of Justice). This Article would establish a new unit called the Open Government Unit.

- The Open Government Unit would be responsible for the following:
  - Developing and implementing education and awareness programs to educate the public and government agencies of their rights and responsibilities under the public records and open meetings laws.
  - Serving as a moderator or mediator in resolving public record and open meeting issues, including adopting procedures and guidelines for assisting in the informal resolution of open government disputes and issuing advisory opinions.
  - Assembling and maintaining a collection of relevant State laws, opinions, rules, and regulations pertaining to public records and open meetings laws, which shall be made available electronically.
  - Annually reporting to the General Assembly on its activities and the subject of open government as appropriate.
  - Adopting and developing policies and procedures as necessary to accomplish those functions.
- A reasonable fee would be charged for the Open Government Unit's services in moderation or mediation, however the fee could not exceed the actual cost of preparing, researching and conducting the moderation or mediation. The fee would be a departmental receipt of the Department and must be used to offset the cost of the Open Government Unit.
- The section would not apply to the General Assembly or the Judicial Department.

Section 2: The Open Government Unit, during the 2008-2009 fiscal year, should receive and attempt to informally resolve disputes between the public and State and local government agencies, as well as educate and raise awareness on rights and responsibilities under public record and open meeting laws.

Section 3: G.S. 132-9(c) would be rewritten to remove the court's discretion to not award attorneys' fees to the prevailing party in an action to compel disclosure of public records if the court found that there was substantial justification in denying access or that circumstances would make the award unjust, and would instead require a mandatory award of attorneys' fees to the prevailing party.

EFFECTIVE DATE: Section 3 of this bill would become effective October 1, 2008, and would apply to actions brought on or after that date. The remainder of the bill would become effective when it became law.

S2064e1-SMTC-CSTC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 8, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	Smith Moore
Marshall McConnell	Carolinas Healthcare
Hugh Tilson	NCHA
Debra DeCamillis	IOG
Jane Pinsky	NCCLGR
Martin Pharr	NC DJJDP
Bill Rowe	NC Justice Center
Julian Mann	OAH
John Bussian	NC Press Assn
Mark Prak	BRMH
Adam Rust	CRA-NC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — July 8, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Morgan Dretches	Paul Adds intern
W. Daniel Amburn	Electricities of N.C., Inc.
Mia D. Bailey	ElectriCities of NC, Inc.
Tracy Kimbrell	Parker Poe
W. Woodward	AP
John Mellor	GOO OFFICE
Dennis Patterson	QSC
Ann Lore	DUKE
Christina Appuson	MED BOARD

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 8, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
MT Burnette	Disability Rts NC
Dan Laura	N+O

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 8, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Dempsey Benton	DHHS
Mandy Ableidinger	Action for Children NC
Andy Lomant	NCLM
Patrick Buffkin	NMRS
Laura Boring	John Locke Foundation
[illegible]	DHHS
Jim Blackburn	NC Association of County Commissioners
Jami [illegible]	NCFPC
Emily Doyle	NCPAPA
Bill O'Donnell	NCSRSA
Daniel Baum	K+L Gates

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 8, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Tim Brock	NCBA
[illegible]	NMRS
DAVID BARNES	Poyner + Spruill
James Dris	NCAA
Christa Craig	Wake Med
Jenni Norman	MHA/NC
Jennifer Mahan	MHA NC
Ken McLeod	CFSA-NC
Anthony Wilson	DOC

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 8, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Brittany Farrell	NCFPC
AM Ripley	NC Justice Ctr
Andrew Cagle	Bone + Assoc.

State of North Carolina
Office of the Lieutenant Governor

BEVERLY EAVES PERDUE
LIEUTENANT GOVERNOR

310 NORTH BLOUNT STREET
20401 MAIL SERVICE CENTER
RALEIGH, NC 27699-0401

TELEPHONE: (919) 733-7350
FAX: (919) 733-6595
e-mail: bperdue@ncmail.net

June 23, 2008

The Honorable Richard B. Glazier
Co-Chair
Legislative Ethics Committee
NC House of Representatives
2215 Legislative Building
Raleigh, NC 27601

Dear Representative ~~Representative~~ Rick Glazier:

I applaud the recent steps that the General Assembly has taken in the area of lobbying and ethics reform. I also believe we must continue to make progress on these fronts. The N. C. Coalition for Lobbying and Government Reform has identified an ambitious agenda for further action, and, although I know this is a "short" session, I believe the legislature can and should take some important next steps this year.

First, our State Ethics Commission is seriously understaffed. The Commission currently has four full-time professional employees, one contractual professional employee, and five administrative staff. Its responsibilities include reviewing about 4,500 Statements of Economic Interests and answering hundreds of requests for informal advisory opinions and formal advisory opinions. The price of having tough new statutes that address government ethics is making sure there are sufficient staff and resources on hand to give timely and well-considered advice to ensure departments, officials and employees follow the law. Adequate funding for new staff positions and resources thus should be a priority item for the budget in this session.

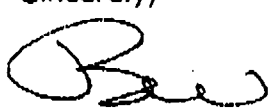
Second, we should authorize development of a plan for broadcasting state government meetings. A dozen states are already televising legislative as well as other meetings, and more than a dozen more are moving down that road. North Carolina needs to join this movement for 21st Century transparency in state government.

Third, we should strengthen and expand the scope of current legislation, such as G.S. 120C-304, to address the "revolving door" phenomenon in state government. News of the recent bribery case involving a former official at the Department of Environment and Natural Resources underscores the need for addressing this issue. I recommend the legislature consider legislation barring state officials who are substantially engaged in state dealings with a private business from leaving state employment and immediately going to work for the private business. We should take a look at legislation Connecticut has passed to address this issue and craft an appropriate North Carolina law on this point.

Fourth, we need to end the practice of legislators soliciting lobbyists for contributions to charities. Unfortunately, the public perception is that lobbyists contributing to charities at legislators' behest is just another way for lobbyists to gain access and curry favor with lawmakers. The Secretary of State's Advisory Council on Lobbying Policy and Regulation recommended prohibiting lawmakers from asking lobbyists to contribute to charities, and other states already have such a ban in place. It's time for North Carolina to do so as well.

I strongly support action this session on these and other items in the Coalition's agenda. I would be happy to discuss them with you at your convenience.

Sincerely,



Beverly Eaves Perdue
Lieutenant Governor

BEP/srn

NORTH CAROLINA COALITION FOR LOBBYING AND GOVERNMENT REFORM
19 WEST HARGETT STREET . SUITE 702 . RALEIGH, NC, 27601 919-833-0092
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THE NEWS&OBSERVER
newsobserver.com

Published: July 06, 2008

Wide open, squeaky clean (we hope)

Steve Ford, Staff Writer

You can almost see the legislators' palms slapping foreheads and hear their exasperated cries: "Why didn't we think of that?"

Actually, though, it took the N.C. Coalition for Lobbying and Government Reform to come up with this suggestion for making the General Assembly operate more like, well, a body of elected representatives as opposed to a secret lodge of the International Order of the Bullfrogs:

"All meetings must be held in meeting rooms in the Legislative Building or Legislative Office Building -- not around a member's desk, in their office or in a hallway."

Brilliant, you have to admit.

Not that the coalition stops there. In the interest of having legislative budget deliberations take place in the open, where the people who sent the budgeteers to Raleigh in the first place can keep a better eye on 'em, the reformers offer several upgrades to the Jones Street ground rules.

To summarize: Don't let the budget bills cooked up by legislative chiefs be rammed through before ordinary members, and the public, have had a chance to figure out what's in them. Keep policy decisions that don't involve money out of the budget bills. (Such "special provisions" have been used to scratch all sorts of legislative itches.)

Tell folks when and where committees will be meeting. Let the public listen in via the Internet or broadcast. Put budget info online a.s.a.p.

If the coalition's rules had been operative, then it's fair to assume that The N&O's Dan Kane wouldn't have been tossed from a meeting the other day at which Sen. Tony Rand (who did the tossing) and other legislative bigwigs were getting the latest (bad) budget news.

Revenues were off, or so the governor's office reportedly told the group. So how would the lawmakers respond?

Rand and his colleagues might not appreciate having the public looking over their shoulders while they make hard decisions that inevitably mean someone's going to be disappointed.

But it's easier to gauge the merit of those decisions when priorities are debated in the open. If a meeting can be monitored through a Web connection, then even if Dan Kane has to be on duty somewhere else, there's a chance for some valuable public oversight.

"Lobbying and government reform" took on greater urgency in Raleigh after the corruption scandals surrounding former House Speaker Jim Black, now biding his time in a federal prison camp. Ethics rules have since been tightened and lobbyists put on shorter leashes, but the coalition sees work yet to be done.

It hasn't escaped notice as this year's campaign season heats up that the scandals had a decidedly Democratic tinge. Republicans who haven't yet gotten around to it will realize soon enough that a promise to muck out the stables after years of Democratic rule could be music to voters' ears.

So give Beverly Perdue credit for taking the initiative and squeezing into the reformers' pew, clean government hymnbook in hand. It's a smart place for the Democratic candidate for governor to sit. And it's good to see her making the effort.

A June 23 letter from the lieutenant governor to the co-chairs of the Legislative Ethics Committee picks up on several recommendations that happen to be on the reform coalition's agenda.

The new State Ethics Commission, Perdue says, is "seriously understaffed" for the task of reviewing some 4,500 Statements of Economic Interest filed by state officials and of issuing advisory opinions dealing with ethics questions.

"The price of having tough new statutes that address government ethics is making sure there are sufficient staff and resources on hand to give timely and well-considered advice to ensure departments, officials and employees follow the law," she writes. Hard to argue with that.

Perdue also calls for movement toward the broadcast of state government meetings, as she says a dozen other states are doing. She says "revolving door" statutes should be strengthened to head off improper dealings between state officials and private businesses for whom the officials could go to work. And she says legislators need to be kept from hitting up lobbyists for contributions to charities.

"Unfortunately," says Perdue, "the public perception is that lobbyists contributing to charities at legislators' behest is just another way for lobbyists to gain access and curry favor with lawmakers." And, she could have added, for legislators to misuse their own influence in self-serving fashion, as some have done.

Perdue's Republican opponent, Charlotte Mayor Pat McCrory, doesn't miss many tricks, so we should expect him to become a familiar face at the reformers' revival. Sister Bev and Brother Pat, come on down!

Editorial page editor Steve Ford can be reached at 929-829-4512 or at steve.ford@newsobserver.com

NC COALITION *for* LOBBYING & GOVERNMENT REFORM
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Charlotte *Observer*, 2 July, 2008

Write N.C. budget in a businesslike way

These reforms would require state budget makers to slow down and share information.

The late Jimmy Green, a powerful Eastern North Carolina lawmaker who at the time was speaker of the N.C. House, came by several years ago to brief Observer editors on the upcoming legislative session.

What will be the biggest issue, we asked.

What it always is, he replied: How to divvy up the money.

So it is.

While our General Assembly deals with many important and challenging issues, one of the toughest is always how to divide the money appropriated in the state budget.

Because there's never enough money to satisfy every legislator's wish list, the finalizing of the budget is the stage of the legislative session when democracy often is thrown out the window and raw power rules.

When the last deals are being made on who gets what, knowledge is power. Yet too often the legislature's most powerful members don't share information in a timely manner with their colleagues or with the public.

The result? Non-financial matters that should not be part of a budget bill suddenly show up in it. Money that wasn't there appears as if by magic. Surprise funding for legislators' pet projects is tucked away to be discovered only long after the budget has been adopted.

This helter-skelter, under-the-table process concentrates too much power in too few hands. It's no way to spend the state's money.

At the bottom of this column today Jane Pinsky, director of the N.C. Coalition for Lobbying and Government Reform, urges legislators to adopt a budget process that would better serve the interests of not only interested citizens but also members of the legislature.

The reforms her group and others recommend would accomplish three worthwhile objectives: allow the public to see what's happening to its money; give legislators an opportunity to know what's in the budget before they vote on it; and in general conduct the people's business in an open and orderly manner.

Adopting these procedures would serve the interests of everyone but those few powerful legislators who benefit from keeping their colleagues and the public in the dark.

To the legislators, we urge this action: Take a look at the reform recommended below, and do it.

(Over)

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For the Record

Write budget in the open

Transparency would promote public trust in N.C. government.

From Jane B. Pinsky, director of the N.C. Coalition for Lobbying and Government Reform:

For more than two years the N.C. Coalition for Lobbying and Government Reform has pushed for increased openness in the legislative procedure, especially the budget process. We have made some progress and the General assembly has taken some positive steps.

However, the current session highlights the need for greater openness and transparency and for making additional improvements in the budget process. We believe these improvements are in the best interest of continuing to restore public trust in government.

There is a better way. The process should:

Be more open and accountable with decisions made in public.

Operate within a framework with an organized procedure, time frames and deadlines.

Contain a prohibition against including non-money items or special provisions in the budget.

Allow legislators three days to review the budget after it is unveiled.

Make all budget information available via the Internet as it is printed.

Make available copies of any proposed budgets from the governor's office or the state budget office or departments at least 24 hours before they are presented to the appropriations or finance committees.

Make all information available to legislators and legislative staff on the internal computer system available to the public on the Internet.

Have at least 24 hours for review of any proposed committee substitute by both legislators and the public before it is discussed in a committee or a subcommittee meeting.

Announce all committee or subcommittee meetings to members, staff and public at least 24 hours in advance of the meeting.

Hold all meetings in meeting rooms in the Legislative Building or Legislative Office Building – not around a member's desk, in their office or in a hallway.

Make all Finance or Appropriations Committee, subcommittee and conference meetings available to the public via streaming and then via real time audio and television broadcast once the systems are established at the General Assembly.

If the General Assembly wants to continue to enjoy the confidence and support of our citizens, then it must open up this critical process and create a budget that truly belongs to the people of North Carolina. In the May 6 primary, North Carolinians proved they are more than willing to participate in our government if they believe in it and if given a chance. Now is the time to give them that chance. Make the budget process open to all citizens.

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

July 9, 2008

MINUTES

The Senate Judiciary I (Civil) Committee met Wednesday, July 9, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt called the meeting to order at 4:05 p.m.

In attendance were Vice Chairman Dan Clodfelter, Vice Chairman Phil Berger, Senator Charlie Albertson, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator Janet Cowell, Senator Clark Jenkins, Senator Floyd McKissick, Senator Tony Rand, and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill and Karen Cochrane Brown. Committee assistant Jessica Kozma Bennett was also present.

Senate Bill 2008

Chairman Nesbitt asked Vice Chairman Berger to chair the meeting as the bill discussed is sponsored by Chairman Nesbitt. A proposed committee substitute was distributed to members and adopted for discussion by a motion by Chairman Nesbitt. Chairman Nesbitt explained changes, and Vice Chairman Berger motioned for favorable report. Discussion ensued among members.

Senator Brunstetter asked that the committee receive feedback "down the road." Chairman Nesbitt said that he hoped the changes to the appeal's process would only be needed through a 10,000 surge in recent claims. Senator McKissick asked if more judges would be hired to deal with the surge, which Chairman Nesbitt replied there were. Senator Tillman asked if the appeals period returned from 20 days to 30 days. Chairman Nesbitt said officials at the Department of Health and Human Services wanted to language to change to a 20 day window, but that it had never changed to begin with.

With a motion for favorable report seconded by Senator Tillman, the bill received favorable report, unfavorable as to original bill, and is re-referred to the Appropriations Committee. The meeting was adjourned at 4:10 p.m.

Respectfully submitted,

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

July 10, 2008, 10 a.m.

MINUTES

The Senate Judiciary I (Civil) Committee met Thursday, July 10, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 10:10 a.m.

In attendance were Chairman Nesbitt, Vice Chairman R.C. Soles, Senator Harry Brown, Senator Pete Brunstetter, Senator David Hoyle, Senator Vernon Malone, Senator Floyd McKissick, Senator Richard Stevens, and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw and Hal Pell. Research Assistant Denise Huntley and Committee Assistant Jessica Kozma Bennett were also present.

House Bill 1624

House Bill 1624 was brought up for discussion by Chairman Nesbitt. A proposed Committee Substitute was distributed to members. Senator Tillman motioned for adoption of the PCS, and the PCS was adopted for discussion by unanimous vote. Chairman Nesbitt then called on Representative Barnhart to explain the bill.

Representative Barnhart explained that the bill authorizes the Parole Commission to give parole consideration every three years to persons convicted of first or second degree murder. Senator Tillman commented that currently convicted murderers are coming up every year for parole, and he moved for a favorable report. Chairman Nesbitt

recognized committee counsel, Bill Gilkeson, who reiterated that the bill changes the time between parole reviews from one to three years. Senator Tillman's motion for favorable report, unfavorable as to original bill passes unanimously. The meeting adjourned at 10:17 a.m.

Respectfully submitted,

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

HOUSE BILL 1624

Short Title:	Frequency of Parole Reviews.	(Public)
Sponsors:	Representatives Barnhart, Almond, Glazier, Goodwin (Primary Sponsors); Avila, Blackwood, Blust, Boylan, Cleveland, Cole, Cotham, Current, Daughtridge, Daughtry, Dockham, Dollar, Folwell, Frye, Grady, Gulley, J. Harrell, Harrison, Hill, Hurley, Johnson, Langdon, Lewis, Love, Martin, McElraft, Moore, Neumann, Pate, Samuelson, Setzer, Spear, Stam, Starnes, Tarleton, Thomas, Tillis, Walend, and Wiley.	
Referred to:	Judiciary II.	

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE FREQUENCY OF PAROLE REVIEWS FOR INMATES CONVICTED OF MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1371(b), repealed by Section 22 of Chapter 538 of the 1993 Session Laws, but still applicable to sentences based on offenses occurring before January 1, 1995, under Section 56 of that act, reads as rewritten:

"(b) Consideration for Parole. – The Parole Commission must consider the desirability of parole for each person sentenced as a felon for a maximum term of 18 months or longer:

(1) Within the period of 90 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year;

(2) Within the period of 90 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the prisoner and the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must give the prisoner written notice of its decision. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted

and must give the prisoner written notice of its decision at least once a ~~year;~~ year, except that, unless the Commission finds that exigent circumstances or the interests of justice demand more frequent parole consideration, in the case of (i) a prisoner convicted of first degree murder other than felony murder, consideration and notice of the decision shall be not more than once every five years; (ii) a prisoner convicted of felony murder, consideration and notice of the decision shall be not more than once every four years; and (iii) a prisoner convicted of second degree murder, consideration and notice of the decision shall be not more than once every three years; or

(3) Whenever the Parole Commission will be considering for parole a prisoner convicted of first- or second-degree murder, first-degree rape, or first-degree sexual offense, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

a. The prisoner;

b. The district attorney of the district where the prisoner was convicted;

c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;

d. Any of the victim's immediate family members who have requested in writing to be notified; and

e. The victim, in cases of first-degree rape or first-degree sexual offense, if the victim has requested in writing to be notified.

The Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, or any member of the victim's immediate family who has requested to be notified, written notice of its decision within 10 days of that decision."

SECTION 2. This act becomes effective July 1, 2007, and applies to parole reviews conducted on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1624
PROPOSED SENATE COMMITTEE SUBSTITUTE H1624-CSRK-86 [v.3]

7/9/2008 5:03:23 PM

Short Title: Frequency of Parole Reviews. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE FREQUENCY OF PAROLE REVIEWS FOR INMATES CONVICTED OF MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1371(b), repealed by Section 22 of Chapter 538 of the 1993 Session Laws, but still applicable to sentences based on offenses occurring before January 1, 1995, under Section 56 of that act, reads as rewritten:

"(b) Consideration for Parole. – The Parole Commission must consider the desirability of parole for each person sentenced as a felon for a maximum term of 18 months or longer:

(1) Within the period of 90 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year;

(2) Within the period of 90 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the prisoner and the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must give the prisoner written notice of its decision. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted and must give the prisoner written notice of its decision at least once a ~~year;~~ year, except as provided in subdivision (4) of this subsection, or

(3) Whenever the Parole Commission will be considering for parole a prisoner convicted of first- or second-degree murder, first-degree rape,

or first-degree sexual offense, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

a. The prisoner;

b. The district attorney of the district where the prisoner was convicted;

c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;

d. Any of the victim's immediate family members who have requested in writing to be notified; and

e. The victim, in cases of first-degree rape or first-degree sexual offense, if the victim has requested in writing to be notified.

The Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, or any member of the victim's immediate family who has requested to be notified, written notice of its decision within 10 days of that decision.

(4) The Commission shall review cases where the prisoner was convicted of first or second degree murder, and in its discretion, give consideration of parole and written notice of its decision once every third year; except that the Commission may give more frequent parole consideration if it finds that exigent circumstances or the interests of justice demand it.

SECTION 2. This act becomes effective October 1, 2008, and applies to parole reviews conducted on and after that date.

HOUSE BILL 1624:
Frequency of Parole Reviews

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 9, 2008
Introduced by:	Reps. Barnhart, Almond, Glazier, Goodwin	**Summary by:**	Hal Pell Committee Co-Counsel
Version:	PCS to First Edition H1624-CSRK		

SUMMARY: ***This act would authorize the Parole Commission to give parole consideration every three years to persons convicted of first or second degree murder. This act becomes effective October 1, 2008.***

CURRENT LAW: Persons convicted of first or second degree murder who were sentenced under the Fair Sentencing Act, receive parole consideration every year.

BILL ANALYSIS: This proposed committee substitute would authorize the Parole Commission, in its discretion, to consider persons convicted of first or second degree murder every three years. The Commission would be allowed more frequent consideration if there were exigent circumstances or it was required in the interests of justice.

The first edition of the bill required [no discretion] the following schedule for parole consideration:

First degree murder (except felony murder): once every five years.

First degree murder (felony murder): once every four years.

Second degree murder: once every four years.

EFFECTIVE DATE: This act becomes effective October 1, 2008.

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 10, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
WILLIAM BRONSON	DHHS - DMH
Jane Smith	DHHS
Pete Jarvis	Gov Office
ACLUP	NCMS
Carmen Hooker	Electric Cities of NC.
Leslie Arnold	SOG - Daily Bulletin
Gary Salamido	GSK

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — July 10, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Adam Parker	Rep. Folwell
Eddie Caldwell	NC Sheriffs' Assn.
Alex Leiva	Sen. Tillman
Doris Weaver	CWA
Tom Caley	CWA
R. Paul Wilms	NCHBA
Chad Essick	Poyner & Spruill, LLP
Daniel Rotch	K & L Gates
Robin Vanderbeck	DAS Staff
Amy Barker	Cabarrus Co.

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 10, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

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1	Julian Holmes	Freedomworks
2	Jim McDowell	Freedom Works
3	Joshua Winner	Freedom Works
4	Hilton Cancel	NC GV
5	Rob Arnold	A-OK
6	Jeff Mixon	Civitas
7	Becki Gray	John Locke Foundation
8	W Chandler	Rt Mc
9		
10		
11		

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 10, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

	NAME	FIRM OR AGENCY AND ADDRESS
1	Bill Hash	UNC-CH HSRC
2	Tom Vitaglione	CFTF
3	John Mackey	Governing
4	Claire Hunter	MWC
5	Bob Youngblood	GRNC
6	Paula Wolf	El Pueblo
7	Morgan Brutchas	Paulatics intern
8	Marylu Rogers	Division of Prisons
9	Richard Burkhart	Dept of Corrections
10	Lynn Connelly	Freedom Works
11	Nancy Bishop	" "

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 10, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

	NAME	FIRM OR AGENCY AND ADDRESS
1	Leslie Arnold	SOG - Daily Bulletin
2	Charles Mann	Parade
3	Tracy Little	NCDOC
4	John Phelps	NCLM
5	Marge Hatley	Freedomworks
6	Lou Dubose	Freedom Works
7	Martha McClure	Freedom Works
8	Mary Wes Adams	Freedom Works
9	Gary Robertson	AP
10	Andy Romanet	NCLM
11	Paul Pulley	NCATL

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — June 10, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

	NAME	FIRM OR AGENCY AND ADDRESS
1	Guynie Knight	Freedom Works
2	Wesley Adams	
3	Gene Troy, JR.	N.C. Human Relations Commission 1318 Mail Service Center Raleigh, NC 27699-1318
4	~~Assistant~~ White	Gov. Office
5	Richard C. Boulden	NC Human Relations Commission
6	TOM YOUNCE	NC Chiefs Assn
7	Chris Fitzsim	NCDW
8	Henry Hutaff	N.C.B.A.
9	~~Marvin~~ Waters	CCPS
10	Jean Holmes	Freedom Works
11	Leanne Winner	NCSBA

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 10, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

	NAME	FIRM OR AGENCY AND ADDRESS
1	Gary McNeil	ACTA
2	Hank Dopl	NWC
3	Selena Chesnutt	CFTF
4	Margaret B	Beemaster
5	David Anders	PFF-PWC
6	Chris Beyatt	NCMS
7	Bill Wilson	SOS
8	Russ Dubishy	IFNC
9	MIKE MANN	SST
10	Rob Scott	NCCA
11	Byrd McAllister	Summit House

VISITOR REGISTRATION SHEET

Judiciary I (Civil) June 10, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kerry Swanson	JLF
Bill Rowe	NC Justice Center
Chris Van Hook	Bar Assn

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

July 15, 2008, After Session

MINUTES

The Senate Judiciary I (Civil) Committee met Tuesday, July 15, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 4:27 p.m..

Also in attendance was Vice Chairman Phil Berger, Vice Chairman Dan Clodfelter, Senator Charlie Albertson, Senator Andrew Brock, Senator Harry Brown, Senator Pete Brunstetter, Senator David Hoyle, Senator Ellie Kinnaird, Senator Vernon Malone,. Senator Floyd McKissick, Senator Tony Rand and Senator Richard Stevens. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw and Hall Pell. Research assistant Denise Huntley and Committee assistant Jessica Kozma Bennett were also present.

House Bill 1253

A Proposed Committee Substitute was passed to members and adopted for discussion by a motion by Senator Rand. Senator Rand told the committee that there was a case when an alleged sex offender was ineligible to be involuntarily committed but was also deemed mentally incompetent to stand trial, and added that the bill is similar to legislation passed in South Carolina. The bill allows for a civil commitment in such cases, with a civil hearing for a defendant to determine whether the person is a sex offender. Senator Rand continued that the bill allows a defendant right to counsel and an experts needed to defend a case.

Chairman Nesbitt asked counsel Emily Johnson if staff wanted to add to Senator Rand's comments. Ms. Johnson introduced herself as acting as staff for the bill, and said there is a United States Supreme Court case of Kansas versus Hindrik regarding such situations.

Conversation ensued among members. Senator Albertson said it was hard to understand someone found incompetent to proceed to trial. Chairman Nesbitt said that evaluations are based on diminished capacity, when a person has an IQ of 70 or below. Vice Chairman Berger asked if there was a notice sent to the victim or the victim's family in cases where a minor is victimized. Senator Clodfelter asked whether any offenses were misdemeanors. Ms Johnson said that only one listed offense on the bill is a misdemeanor.

Senator Brunstetter asked if a person's condition changes would they go to trial, of which Chairman Nesbitt said they would either stand trial or be committed. The bill was then displaced until a later meeting.

House Bill 2340

Senator Purcell was called to speak to House Bill 2340, who explained that House Bill 2340 allowed children to ride in the cargo space of a pickup truck, but that the child had to be with a parent, noting that statistically riding in the cargo area of a truck increase the potential of death nine-fold.

After little discussion Senator Kinnaird moved for favorable report. An amendment was offered by Senator Brown, the amendment passed unanimously. The bill will be redrafted into a Proposed Committee Substitute. The meeting was adjourned at 5:23 p.m.

Respectfully submitted,

Martin Nesbitt

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1253

Short Title:	Juvenile Code Revisions.	(Public)
Sponsors:	Representatives Dickson, Jones, Haire (Primary Sponsors); Alexander, Cotham, Glazier, Harrison, Insko, Kiser, and Samuelson.	
Referred to:	Juvenile Justice, if favorable, Judiciary II.	

April 2, 2007

A BILL TO BE ENTITLED

AN ACT TO REVISE THE JUVENILE CODE WITH REGARD TO SECURE CUSTODY ORDERS, DELINQUENCY HISTORY LEVELS, AND DISPOSITIONAL LIMITS OF DELINQUENT JUVENILES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1903(d) reads as rewritten:

"(d) The court may order secure custody for a juvenile who is alleged to have substantially violated the conditions of the juvenile's probation or post-release ~~supervision, but only if the juvenile is alleged to have committed acts that damage property or injure persons.~~ supervision."

SECTION 2. G.S. 7B-2507(b) reads as rewritten:

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

(1) For each prior adjudication of a Class A through E felony offense, 4 points.

(2) For each prior adjudication of (i) a Class F through I felony ~~offense or~~ offense, (ii) a Class A1 misdemeanor offense, or (iii) an offense in violation of G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors), 2 points.

(3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, except offenses in violation of G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors), 1 point.

(4) If the juvenile was on probation at the time of offense, 2 points."

SECTION 3. G.S. 7B-2508(a) reads as rewritten:

"(a) Offense Classification. – The offense classifications are as follows:

(1) Violent – Adjudication of a Class A through E felony offense;

(2) Serious – Adjudication of (i) a Class F through I felony ~~offense or~~ offense, (ii) a Class A1 ~~misdemeanor;~~ misdemeanor, or (iii) an offense in violation of G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors);

(3) Minor – Adjudication of a Class 1, 2, or 3 ~~misdemeanor.~~ misdemeanor, except offenses in violation of G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors)."

SECTION 4. G.S. 7B-2510(e) reads as rewritten:

"(e) If the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation set by the court, the court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new disposition at the next higher level on the disposition chart in G.S. 7B-2508. In the court's discretion, ~~part of the new disposition~~ if the juvenile's disposition is not raised to a higher level of disposition, the court may include an order of confinement in a secure juvenile detention facility for up to twice the term authorized by ~~G.S. 7B-2508.~~ G.S. 7B-2508 for the juvenile's dispositional level."

SECTION 5. G.S. 7B-1501 is amended by adding a new subdivision to read:

"(21a) Prior adjudication. – Any adjudication that occurred before the current date of disposition which is not a part of some related transaction for the current offense."

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1253
PROPOSED SENATE COMMITTEE SUBSTITUTE H1253-CSLH-48 [v.1]

7/15/2008 7:20:30 PM

Short Title: Sex Offender/Incapacity to Proceed. (Public)

Sponsors:

Referred to:

April 2, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CIVIL COMMITMENT OF CERTAIN SEX OFFENDERS WHO LACK THE CAPACITY TO PROCEED TO TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1003(a) reads as rewritten:

"(a) ~~When~~ Except as provided in G.S. 15A-1003.1, when a defendant is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a violent crime and that he was found incapable of proceeding."

SECTION 2. Article 56 of Chapter 15A of the General Statutes is amended by adding the following sections to read:

"**§ 15A-1003.1. Referral of incapable defendant charged with sex offense against a child less than 16 years of age for commitment evaluation, review, and proceedings; disposition of defendant.**

(a) When a defendant charged with a sex offense as defined in G.S. 122F-2 is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as the judge determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary

commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes or the criteria for commitment under Chapter 122F of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, the judge shall make findings of fact and issue a custody order in the same manner and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. The judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a sex offense as defined in G.S. 122F-2 and that the defendant was found incapable of proceeding.

(b) Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes except as follows:

(1) If the physician conducting the examination finds that the defendant meets the criteria for involuntary commitment, the defendant shall be involuntarily committed pursuant to the provisions of Part 7 of Article 5 of Chapter 122C.

(2) If the physician conducting the examination finds that the defendant does not meet the criteria for involuntary commitment, the physician shall find whether the defendant has a mental abnormality as defined in G.S. 122F-2. If the physician determines that the defendant does have a mental abnormality, the physician shall include that determination in the findings and shall provide those findings to both the clerk of court and to the appropriate court as provided by Chapter 122C. The court shall refer the case of any defendant who does not meet the criteria for involuntary commitment but who does have a mental abnormality as defined in G.S. 122F-2 for review by the Prosecutor's Review Committee and the Attorney General and possible commitment of the defendant under Chapter 122F of the General Statutes. The court shall further order that the defendant be held in the custody of the Department of Health and Human Services for secure confinement and treatment until the review by the Prosecutor's Review Committee and the Attorney General, and any subsequent hearing or trial is completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of the defendant after conducting a review pursuant to Chapter 122F of the General Statutes then the court shall order the defendant be released or otherwise committed as appropriate.

(c) The court may make appropriate orders for the temporary detention of the defendant pending that proceeding.

(d) Evidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings."

SECTION 3. G.S. 15A-1004 reads as rewritten:

"**§ 15A-1004. Orders for safeguarding of defendant and return for trial.**

(a) When a defendant is found to be incapable of proceeding, the trial court must make appropriate orders to safeguard the defendant and to ensure his return for trial in the event that he subsequently becomes capable of proceeding.

(b) If the defendant is not placed in the custody of a hospital or other institution in a proceeding for involuntary civil ~~commitment,~~ commitment or civil commitment under Chapter 122F of the General Statutes appropriate orders may include any of the procedures, orders, and conditions provided in Article 26 of this Chapter, Bail, specifically including the power to place the defendant in the custody of a designated person or organization agreeing to supervise him.

(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil ~~commitment,~~ commitment or commitment under Chapter 122F of the General Statutes, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. If the defendant was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate.

(d) If the defendant is placed in the custody of a hospital or institution pursuant to proceedings for involuntary civil commitment, or if the defendant is placed in the custody of another person pursuant to subsection (b), the orders of the trial court must require that the hospital, institution, or individual report the condition of the defendant to the clerk at the same times that reports on the condition of the defendant-respondent are required under Part 7 of Article 5 of Chapter 122C of the General Statutes, or more frequently if the court requires, and immediately if the defendant gains capacity to proceed. The order must also require the report to state the likelihood of the defendant's gaining capacity to proceed, to the extent that the hospital, institution, or individual is capable of making such a judgment.

(e) The orders must require and provide for the return of the defendant to stand trial in the event that he gains capacity to proceed, unless the charges have been dismissed pursuant to G.S. 15A- 1008, and may also provide for the confinement or pretrial release of the defendant in that event.

(f) The orders of the court may be amended or supplemented from time to time as changed conditions require."

SECTION 4. Article 56 of Chapter 15A of the General Statutes is amended by adding a new section to read;

"**§ 15A-1010. Referral of defendant who is incapable of proceeding to trial and charged with sex offense against a child less than 16 years of age for civil commitment review prior to dismissal of case.**

Notwithstanding G.S. 15A-1008 or G.S. 15A-1009, prior to dismissing the charges against a defendant who is both charged with a sex offense as defined in G.S. 122F-2 and found incapable of proceeding to trial, the court shall determine whether the defendant's case was referred for review under Chapter 122F of the General Statutes, and if not whether such referral is appropriate. If the court determines that referral is appropriate, then the court shall not dismiss the case at that time but shall refer the case for review to the Prosecutor's Review Committee and the Attorney General pursuant to Chapter 122F of the General Statutes."

SECTION 5. G.S. 122C-261(e) reads as rewritten:

"(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to ~~G.S. 15A-1003,~~ G.S. 15A-1003 or G.S. 15A-1003.1, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State."

SECTION 6. G.S. 122C-263(b) reads as rewritten:

"(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;

(2) The custody order states that the respondent was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and he was found incapable of proceeding; or

(3) Repealed by Session Laws 1987, c. 596, s. 3.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252."

SECTION 7. G.S. 122C-266(b) reads as rewritten:

"(b) If the custody order states that the respondent was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and that he was found incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing."

SECTION 8. G.S. 122C-268(c) reads as rewritten:

"(c) If the respondent's custody order indicates that he was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving an assault with a deadly weapon, and that he was found incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found incapable of proceeding may represent the State's interest at the hearing."

SECTION 9. The General Statutes are amended by adding a new Chapter to read:

"Chapter 122F.

"Civil Commitment of Certain Sex Offenders.

"§ 122F-1. Legislative findings.

The General Assembly finds that a group of individuals who commit sexual offenses against children but who are found incapable of proceeding to trial exists who require involuntary civil commitment in a secure facility for long-term control, care, and treatment. The General Assembly further finds that without very close supervision there is a high likelihood that these offenders will repeat their sexual offenses against children. Although these offenders may be incapable of proceeding to trial, they may not be diagnosed as mentally ill and therefore can not be involuntarily committed under involuntary commitment proceedings that pertain to persons who are mentally ill and a danger to self or others. Because the existing civil commitment process is inadequate to address the special needs of these sexual offenders, the risks that they present to society, and the likelihood of repeat offenses against children, the General Assembly has determined that a separate, involuntary civil commitment process for the long-term control, care, and treatment of these sexual offenders is necessary.

"§ 122F-2. Definitions.

The following definitions apply in this Chapter:

(1) Court.—The appropriate Superior Court in the Superior Court Division of the General Court of Justice.

(2) Mental abnormality.– A mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sex offenses in a degree constituting such person a menace to the health and safety of others. The term includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long-term control, care, and treatment.

(3) Sex offense. The term includes any of the offenses set out in this subdivision if the offense is committed against a child less than 16 years of age. The term also includes a solicitation or conspiracy to commit any of these offenses against a child less than 16 years of age and aiding and abetting any of these offenses if committed against a child less than 16 years of age.

a. G.S. 14-27.2 (first degree rape).
b. G.S. 14-27.3 (second degree rape).
c. G.S. 14-27.4 (first degree sexual offense).
d. G.S. 14-27.5 (second degree sexual offense)
e. G.S. 14-27.5A (sexual battery)
f. G.S. 14-27.6 (attempted rape or sexual offense)
g. G.S. 14-27.7 (intercourse and sexual offense with certain victims)
h. 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).
i. G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude).
j. G.S. 14-178 (incest between near relatives).

k. G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency).
l. G.S. 14-190.9(a1)(felonious indecent exposure).
m. G.S. 14-190.16 (first degree sexual exploitation of a minor).
n. G.S. 14-190.17 (second degree sexual exploitation of a minor).
o. G.S. 14-190.17A (third degree sexual exploitation of a minor)
p. G.S. 14-190.18 (promoting prostitution of a minor).
q. G.S. 14-190.19 (participating in the prostitution of a minor).
r. G.S. 14-202.1 (taking indecent liberties with children).
s. G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act).

(4) Sexual predator.– A person who: (i) is charged with committing a sex offense; (ii) is found incapable of proceeding to trial, and (iii) suffers from a mental abnormality.

"§ 122F-3. Scope of Chapter; referral of defendant for review and possible civil commitment as sexual predator.

Civil commitment pursuant to this Chapter is available only for a defendant who is charged with a sex offense, found incapable of proceeding to trial, and determined to have a mental abnormality. A defendant who is charged with a sex offense and determined to be incapable of proceeding to trial may be referred for review and determination of whether the defendant is a sexual predator under this Chapter by either a court pursuant to G.S. 1003.1 or by a facility, institution or agency that has custody of the defendant pursuant to G.S. 122F-4.

"§ 122F-4. Release of certain defendants from confinement in secure facility.

(a) No release of certain defendants from secure facility without notice.– No facility, institution, or agency that has legal custody of a defendant who: (i) is charged with a sex offense but found incapable of proceeding to trial, and (ii) is lawfully confined in a secure facility shall release the defendant without providing notice of the pending release to the Attorney General, the Prosecutor's Review Committee, and the victim and the victim's parent or legal guardian at least 90 days before the release.

(b) Information to be provided to the victim and the victim's parent or legal guardian, Attorney General, and Prosecutor Review Committee.– The facility, institution, or agency with legal custody of the defendant shall provide to the victim and the victim's parent or legal guardian, the Attorney General, and the Prosecutor's Review Committee all of the following:

(1) The defendant's name, identifying factors, anticipated future residence, and offense history.
(2) The documentation of institutional adjustment and any treatment received by the sexual predator.

(c) Immunity.– The facility, institution, or agency with custody of the defendant, its employees, officials, individuals contracting, appointed, or volunteering to perform services under this Chapter, and the Prosecutor's Review Committee established in G.S. 122F-5 are immune from civil or criminal liability for any good-faith conduct under this Chapter.

"**§ 122F-5. Prosecutor's Review Committee; scope of review; membership requirements.**

(a) Committee appointed; membership.– The Attorney General shall appoint a Prosecutor's Review Committee. The Committee shall include a member of the staff of the Attorney General, a district attorney, and a victim's representative. The Attorney General or the Attorney General's designee shall be the chair of the Committee.

(b) Duties and scope of review.– The Prosecutor's Review Committee shall review the report and records of each person referred to the committee by the court and of each person for whom the committee receives notice of a pending release under G.S. 122F-4 to determine whether or not probable cause exists to believe the person is a sexual predator. The Prosecutor's Review Committee shall make the probable cause determination within 30 days of receiving the report and records from the court or facility, institution, or agency as appropriate. In addition to the records and reports considered by the court referring the defendant's case pursuant to G.S. 15A-1003.1, or the facility, institution, or agency notifying the Committee of a pending release of a defendant, the committee shall also consider information provided by the district attorney who prosecuted the defendant.

"**§ 122F-6. Petition for probable cause determination.**

When the Prosecutor's Review Committee has determined that probable cause exists to support the allegation that the defendant is a sexual predator, the Attorney General shall file a petition with the court in the jurisdiction where the person committed the offense and shall notify the victim and the victim's parent or legal guardian and the district attorney in the jurisdiction where the defendant was charged with the offense that the committee found that probable cause exists. The Attorney General shall also notify the victim and the victim's parent or legal guardian of the time, date, and location of the probable cause hearing before the court. The petition, which must be filed within 30 days of the probable cause determination by the Prosecutor's Review Committee, shall request that the court make a probable cause determination as to whether the person is a sexual predator. The petition shall allege that the defendant is a sexual predator and shall state sufficient facts that would support a probable cause allegation.

"**§ 122F-7. Determination of probable cause; taking person into custody; hearing; evaluation.**

(a) Determination of probable cause. – Upon filing of a petition under G.S. 122F-6, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexual predator. If the court determines that probable cause exists to believe that the person is a sexual predator, the person shall be taken into custody if he or she is not already confined in a secure facility.

(b) Notice and hearing to contest probable cause.– Immediately upon being taken into custody pursuant to subsection (a) of this section, the person shall be provided with notice of the opportunity to appear in person at a hearing to contest probable cause as to whether the detained person is a sexual predator. This hearing shall be held within 72 hours after a person is taken into custody pursuant to subsection (a) of this section. At this hearing the court shall do all of the following:

(1) Verify the detainee's identity.

(2) Receive evidence and hear arguments from the person and the district attorney or Attorney General as appropriate.

(3) Determine whether probable cause exists to believe that the person is a sexual predator.

The State may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) Defendant's rights at hearing to contest probable cause.– At the hearing to contest probable cause as provided in subsection (b) of this section, the detained person has all of the following rights in addition to any rights previously specified:

(1) To be represented by counsel.

(2) To present evidence on the person's behalf.

(3) To cross-examine witnesses who testify against the person.

(4) To view and copy all petitions and reports in the court file.

(d) Evaluation of defendant if probable cause found.– If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility including, but not limited to, a local or regional detention facility for an evaluation as to whether the person is a sexual predator. The evaluation shall be conducted by a qualified expert approved by the court at the probable cause hearing.

"**§ 122F-8. Trial; trier of fact; continuation of trial; assistance of counsel; access of examiners to person; payment of expenses.**

(a) Authority of Attorney General and District Attorney to represent the State in trial for civil commitment.—Both the Attorney General and the District Attorney in the jurisdiction where the defendant committed the sex offense may represent the State in the trial for civil commitment pursuant to this section and G.S. 122F-9; however, if venue for the civil commitment trial is the jurisdiction where the defendant was charged with the sex offense, then the Attorney General shall refer the case to the appropriate district attorney in that jurisdiction unless ordered otherwise by the Court.

(b) Trial schedule; request for jury trial; continuation of trial; notice to victim and victim's parent or legal guardian.– Within 60 days after the completion of a hearing held pursuant to G.S. 122F-6 in which probable cause was found, the court shall conduct a trial to determine: (i) whether the person committed the act with which the defendant is charged and, if so, (ii) whether the person is a sexual predator. Within 30 days after the determination of probable cause by the court pursuant to G.S. 122F-7, the person, or the district attorney or Attorney General as appropriate, may request, in writing, that the trial be before a jury. If such a request is made, the court shall schedule a trial before a jury at the next available date in the superior court in the county where the offense was committed. If no request is made, the trial shall be before a judge in the county where the offense was committed. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General or the district attorney as appropriate shall notify the victim and the victim's parent or legal guardian, in a timely manner, of the time, date, and location of the trial.

(c) Assistance of counsel; access of examiners to person; payment of expenses. – At all stages of the proceedings under this Chapter, a person subject to this Chapter is entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist the person. If a person is subjected to an examination under this Chapter, the person may retain a qualified expert of his or her own choosing to perform the examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his or her own choosing, the court shall determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court shall assist the person in obtaining the expert to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source.

"**§ 122F-9. Standard for determining predator status; control, care and treatment of defendant; interagency agreements; release; mistrial procedures.**

(a) Trial: Determine whether defendant committed unlawful act.– When conducting a trial under this Chapter, the court first shall hear evidence and determine whether the defendant committed the act with which he or she is charged. The hearing on this issue shall comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while lacking the capacity to proceed to trial, apply. After hearing evidence on this issue, the court shall make specific findings on whether the defendant committed the act with which he or she is charged; the extent to which the defendant's incompetence or developmental disability affected the outcome of the hearing, including its effect on the defendant's ability to consult with and assist counsel and to testify on the defendant's own behalf; the extent to which the evidence could be reconstructed without the assistance of the defendant; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the defendant committed the act with which he or she is charged, the court shall enter a final order and may proceed to consider whether the defendant should be committed pursuant to this Chapter.

(b) Trial: Determine sexual predator status.– The court or jury shall determine whether, beyond a reasonable doubt, the defendant is a sexual predator. If a jury determines that the defendant is a sexual predator, the determination shall be by unanimous verdict. If the court or jury determines that the defendant is a sexual predator, the defendant shall be committed to the custody of the Department of Health and Human Services for control, care, and treatment until such time as the defendant's mental abnormality has so changed that the defendant is safe to be at large and has been released pursuant to this Chapter.

(c) Control, care, and treatment of defendant.– The control, care, and treatment shall be provided at a facility operated by the Department of Health and Human Services. At all times, a defendant committed for control, care, and treatment by the Department of Health and Human Services pursuant to this Chapter shall be kept in a secure facility, and the defendant shall be segregated at all times from other patients under the supervision of the Department of Health and Human Services. The Department of Health and Human Services may enter into an interagency agreement with the Department of Correction for the control, care, and treatment of these defendants. A defendant who is in the confinement of the Department of Correction pursuant to an interagency agreement authorized by this Chapter shall be kept in a secure facility and shall, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Correction.

(d) Release if jury not convinced beyond a reasonable doubt.– If the court or jury is not satisfied beyond a reasonable doubt that the defendant committed the act with which the defendant was charged the defendant shall be released. If the court or jury is not satisfied beyond a reasonable doubt that the defendant is a sexual predator, the court shall direct the defendant's release.

(e) Mistrial.– Upon a mistrial, the court shall direct that the defendant be held at an appropriate secure facility including, but not limited to, a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within 90 days of the previous trial, unless the subsequent trial is continued.

(f) Right of appeal.– The court or jury's determination that a defendant committed the act with which the defendant is charged may be appealed. The court or jury's determination that a defendant is a sexual predator may be appealed. The defendant shall be committed to the custody of the Department of Health and Human Services pending his or her appeal.

"**§ 122F-10. Periodic mental examination of committed defendants; report; petition for release; hearing; trial to consider release.**

(a) Periodic mental examination.– A defendant committed pursuant to this Chapter shall have an examination of his or her mental condition performed once every year. The defendant may retain or, if the defendant is indigent and so requests, the court may appoint a qualified expert to examine the defendant, and the expert shall have access to all medical, psychological, criminal offense, and disciplinary records and reports concerning the defendant. The annual report shall be provided to the court which committed the defendant pursuant to this Chapter, the Attorney General, and the district attorney who prosecuted the defendant.

(b) Judicial hearing; defendant's right to petition for release.– The court shall conduct an annual hearing to review the status of the committed defendant. The committed defendant is not prohibited from petitioning the court for release at this hearing. The Secretary of Health and Human Services shall provide the committed defendant with an annual written notice of the defendant's right to petition the court for release over the Secretary's objection; the notice shall contain a waiver of rights. The Secretary shall forward the notice and waiver form to the court with the annual report.

The committed defendant has a right to have an attorney represent him or her at the hearing, but the committed defendant is not entitled to be present at the hearing.

(c) Change in mental abnormality.– If the court determines that probable cause exists to believe that the defendant's mental abnormality has so changed that the defendant is safe to be at large and, if released, is not likely to commit a sex offense, the court shall schedule a trial on the issue. At the trial, the committed defendant is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the defendant at the initial commitment proceeding. The Attorney General shall notify the victim and the victim's parent or legal guardian of all proceedings. The Attorney General shall represent the State and has the right to have the committed defendant evaluated by qualified experts chosen by the State. The trial shall be before a jury if requested by the defendant, or the Attorney General. The committed defendant also has the right to have qualified experts evaluate the defendant on the defendant's behalf, and the court shall appoint an expert if the defendant is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the committed defendant's mental abnormality remains such that the defendant is not safe to be at large and, if released, is likely to engage in sex offenses.

"**§ 122F-11. Petition of release; hearing ordered by court.**

If the Secretary of Health and Human Services determines that the defendant's mental abnormality has so changed that the defendant is safe to be at large and, if released, is not likely to commit a sex offense, the Secretary shall authorize the defendant to petition the court for release. The petition shall be served upon the court and the Attorney General. The Attorney General shall notify the victim and the victim's parent or legal guardian of the proceeding. The court, upon receipt of the petition for release, shall order a hearing within 30 days. The Attorney General shall represent the State and has the right to have the petitioner examined by experts chosen by the State. The hearing shall be before a jury if requested by either the petitioner or the Attorney General. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the petitioner's mental abnormality remains such that the petitioner is not safe to be at large and, that if released, is likely to commit a sex offense.

"**§ 122F-12. Grounds for denial of petition for release.**

Nothing in this Chapter prohibits a defendant from filing a petition for release pursuant to this Chapter. However, if a defendant has previously filed a petition for release without the approval of the Secretary of Health and Human Services, and the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not changed so that the petitioner continued to be a threat and, if released, would commit a sex offense, the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed defendant without the Secretary's approval, the court shall, whenever possible, review the petition and determine if the petition is based upon frivolous grounds and, if so, shall deny the petition without a hearing.

"**§ 122F-13. Restricted release of confidential information and records to agencies and Attorney General.**

In order to protect the public, relevant information and records that otherwise are confidential or privileged shall be released to the facility, institution, or agency with legal custody of a defendant and the Attorney General for the purpose of meeting the notice requirements of G.S. 122F-4 and determining whether a defendant is or continues to be a sexual predator.

"**§ 122F-14. Evidentiary records; court order to open sealed records.**

Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, or victim impact statements that have been submitted to the court or admitted into evidence under this Chapter shall be part of the record, but must be sealed and opened only on order of the court.

"**§ 122F-15. Registration of defendants released from commitment.**

A defendant released from commitment pursuant to this Chapter shall register pursuant to and comply with the requirements of Article 27A of Chapter 14 of the General Statutes.

"**§ 122F-16. Involuntary detention or commitment; constitutional requirements.**

The involuntary detention or commitment of a defendant pursuant to this Chapter shall conform to constitutional requirements for care and treatment.

"**§ 122F-17. Return of defendant for trial upon regaining capacity.**

If a defendant who is committed under this Chapter, gains capacity to proceed to trial, the individual or institution that has custody of the defendant shall notify the clerk in the county in which the criminal proceeding is pending and the defendant shall be returned for trial pursuant to G.S. 15A-1006."

SECTION 10. Part 1 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.6D. Registration requirement for certain persons charged with sex offenses but found incapable of proceeding to trial.**

Pursuant to G.S. 122F-15, a person who is charged with a sex offense as defined in G.S. 122F-2, is found incapable of proceeding to trial, is committed under Chapter 122F of the General Statutes, and is later released from commitment shall register in person just as a defendant convicted of the same offense with which the person is charged must register."

SECTION 11. This act becomes effective September 1, 2008, and applies to any defendant charged with a sex offense as defined by G.S. 122F-2 as enacted by Section 9 of this act and found incapable of proceeding to trial under Article 56 of Chapter 15A of the General Statutes, before, on, or after September 1, 2008, if the defendant has a mental abnormality unless the charge was dismissed under G.S. 15A-1008 before September 1, 2008.

HOUSE BILL 1253: Juvenile Code Revisions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 15, 2008
Introduced by:	Reps. Dickson, Jones, Haire	**Summary by:**	Emily Johnson
Version:	PCS to First Edition H1253-CSLH-48[v1]		Staff Attorney

SUMMARY: ***The PCS for HB 1253 adds a new Chapter 122F to the General Statutes. Chapter 122F creates a new civil commitment procedure that is available exclusively for the commitment of a defendant who: (i) is charged with committing a sex offense against a child under the age of 16 years, (ii) is found incompetent to proceed to trial, and (iii) who does not meet the criteria for involuntary commitment but does suffer from a mental abnormality. A mental abnormality is defined as "a mental condition affecting the defendant's emotional or volitional capacity that predisposes the person to commit sex offenses to a degree that makes the person a menace to the health and safety of others. The term also includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long term control, care, and treatment."***

The revised PCS makes the following changes:

- ***Requires that all notices to victims also be given to the victim's parent or legal guardian.***
- ***Provides that both the Attorney General and District Attorney may represent the State in the trial for civil commitment, but that the Attorney General shall refer the case to the appropriate district attorney if venue for the civil commitment trial is the jurisdiction where the defendant was charged with the sex offense.***
- ***Removes the transition provision providing for involuntary commitment until the effective date of the bill.***
- ***Revises the effective date from December 1, 2008 to September 1, 2008.***

CURRENT LAW: Part 7 of Article 5 of Chapter 122C (Mental Health) provides for the involuntary commitment of the mentally ill. Under G.S. 122C-261, individuals alleged to be mentally ill and dangerous to themselves or others may be taken into custody for examination. G.S. 122C-264 requires that if the examining physician or psychologist recommends commitment, the matter shall be calendared for hearing in district court. G.S. 122C-266 states that an individual may be held at a facility pending the hearing, but that individuals charged with a violent crime found incapable of proceeding may not be released until ordered following the district court hearing. G.S. 112C-268 requires the hearing to be held within 10 days of when the individual was taken into custody and provides that the respondent may be represented by counsel or have counsel appointed in accord with rules adopted by the Office of Indigent Defense Services. With the court's consent, counsel may in writing waive the respondent's presence. To support an impatient commitment order, the court must find by clear and convincing evidence that the respondent is mentally ill and dangerous to self or others. G.S. 122C-272 provides that the district court's judgment may be appealed to the Court of Appeals. G.S. 122C-276 provides for rehearings 15 days before the end of the initial inpatient commitment period to determine if commitment beyond the initial period is required.

BILL ANALYSIS: The PCS to HB 1253 provides that when a defendant who is charged with committing a sex offense against a child under the age of 16 years is found incompetent to proceed to trial, the presiding judge must also determine whether there are reasonable grounds to believe that the defendant either meets the criteria to be involuntarily committed under existing law (Part 7 of Article 5 of Chapter 122C) or has a mental abnormality.

Sections 1-8: If the judge finds reasonable grounds to believe that the defendant meets either the involuntary commitment criteria or has a mental abnormality, then the judge must enter a custody order to have the defendant evaluated for both conditions by a physician. The procedure to be followed for the evaluations is the procedure set out in Part 7 of Article 5 of Chapter 122C (Involuntary Commitment of the Mentally Ill). If the physician conducting the examination finds the defendant meets the criteria for involuntary commitment, then the defendant shall be involuntarily committed as provided by current law. (See Part 7 of Article 5 of Chapter 122C.) If the physician finds that the defendant does not meet the criteria for involuntary commitment but does have a mental abnormality, then the physician shall include that finding in the report provided to both the clerk of court and to the court. The court shall

then refer the defendant to the Attorney General and Prosecutor's Review Committee created by the PCS to be reviewed for possible civil commitment under Chapter 122F of the General Statutes. The PCS also makes conforming changes to Part 7 of Article 5 of Chapter 122C.

Section 9: The PCS to HB 1253 would create a new chapter, Chapter 122F (Civil Commitment of Certain Sex Offenders) which establishes a new procedure for the civil commitment of a defendant who lacks the capacity to proceed to trial and who is determined to be a sexual predator.

Key Definitions: A **sexual predator** is defined as a defendant who:

(i) is charged with committing a sex offense against a child under the age of 16 years,

(ii) is found incompetent to proceed to trial, and

(iii) suffers from a mental abnormality that makes the defendant likely to engage in sex offenses against minors if not confined in a secure facility for long-term control, care, and treatment.

A **mental abnormality** is defined as: "a mental condition affecting the defendant's emotional or volitional capacity that predisposes the person to commit sex offenses in a degree that makes the person a menace to the health and safety of others. The term includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long term control, care, and treatment."

Prosecutor's Review Commission: Under Chapter 122F, the Attorney General must appoint a Prosecutor's Review Committee. There is no set number for the Committee membership, but it must include a staff member of the Attorney General, a district attorney, and a victim's representative. The Attorney General or the Attorney General's designee serves as Chair of the Committee.

Referral of Cases: Cases of incompetent defendants who appear to meet the criteria for a sexual predator as defined above are referred to the Committee for review to determine whether probable cause exists to believe that the person is a sexual predator. The cases are referred in two ways:

1) By a court after it determines that a defendant lacks the capacity to stand trial, cannot be involuntarily committed, but may have a mental abnormality, or

2) By a facility, institution, or agency that has custody of an incompetent defendant charged with a sex offense who has been in secure facility but whose release from the facility is pending.

Petition for Probable Cause Review: If the Committee finds that probable cause exists to support the allegation that the defendant is a sexual predator, the Attorney General must petition the court in the jurisdiction where the defendant committed the offense to make a probable cause determination on that issue. Notice must be given to the victim, victim's parent or legal guardian, and the district attorney in the jurisdiction where the defendant was charged.

Probable Cause Determination: Once the petition is filed, the court determines whether probable cause exists. Either the district attorney or Attorney General may present evidence to the court. If probable cause is found, the defendant is taken into custody if not already confined in a secure facility. The defendant has the right to contest the probable cause determination as to whether the defendant is a sexual predator at a separate hearing. If probable cause is found, the defendant is transferred to a secure facility for an evaluation by a qualified expert approved by the court as to whether the defendant is a sexual predator.

Trial: A trial is scheduled in Superior Court within 60 days after the completion of the probable cause hearing if probable cause is found. Both the Attorney General and the District Attorney of the jurisdiction where the defendant committed the offense may represent the State; however, if venue for the trial is the jurisdiction where the defendant was charged, the Attorney General should refer the case to the appropriate District Attorney. A jury trial may be requested by either the defendant or the Attorney General, and if requested shall be granted. Otherwise, the trial is before a judge in the county where the offense was committed. Once the trial date is set, the Attorney General or district attorney must notify the victim and the victim's parent or guardian in a timely manner of the time, date, and location of the trial. The defendant has a right to counsel at the trial and, if indigent, shall have counsel appointed if so requested. If an examination of the defendant is required, the defendant may retain his or her own qualified expert to conduct the examination. If the defendant is indigent and requests his or her own expert the court must determine whether the expert's services are necessary and whether the expert's compensation request is reasonable.

Standard for Determining Predator Status: At the trial the court determines two issues:

(i) whether the defendant committed the act with which the defendant is charged, and if so,

(ii) whether the defendant is a sexual predator.

The standard of proof for both issues is "beyond a reasonable doubt."

Issue 1: Commission of Charged Act - With regard to the first issue, the court must conduct an evidentiary hearing in which the criminal rules of evidence and constitutional rights available to defendants at criminal trials, other than the right not to be tried while lacking the capacity to stand trial, apply. The court must make specific findings on all of the following:

- whether the defendant committed the act with which he or she is charged,
- the extent to which the defendant's incompetence or developmental disability affected the outcome of the hearing,
- the extent to which the evidence could be reconstructed without the assistance of the defendant, and
- the strength of the prosecution's case.

If the court finds beyond a reasonable doubt that the defendant committed the act as charged, then the court must enter a final order on that issue that is appealable by the defendant and proceed to the second issue.

Issue 2: Determination of whether the defendant is a sexual predator. - The trial court or jury must determine beyond a reasonable doubt that the defendant is a sexual predator. A jury determination that the defendant is a sexual predator must be by unanimous verdict. If the court or jury determine the defendant to be a sexual predator, then the defendant is committed to the custody of the Department of Health and Human Services for control, care, and treatment until the time when the defendant's mental abnormality has changed to the extent the defendant is safe to be at large and may be released as provided by Chapter 122F.

Control, Care and Treatment of Defendant: A defendant committed under Chapter 122F must be housed in a secure facility operated by the Department of Health and Human Services and shall be segregated at all times from other patients under the supervision of the Department. However, the Department of Health and Human Services may enter into an interagency agreement with the Department of Correction for the control, care, and treatment of the defendant, in which case the defendant would be housed in a secure facility managed by the Department of Correction. In that situation, the Department of Correction must, to the degree possible, house the defendant separately from other offenders in the custody of the Department of Correction.

Mistrial: In the event of a mistrial, the defendant must be held in an appropriate secure facility, which would include a State or local detention facility, until another trial is conducted. A subsequent trial must be conducted within 90 days of the mistrial unless the subsequent trial is continued.

Right of Appeal: Both the determination of whether the defendant committed the unlawful act with which the defendant is charged and the determination that the defendant is a sexual predator can be appealed by the defendant.

Periodic evaluation: Annually there must be both an examination of the defendant to determine the defendant's mental condition with the results reported to the court, the Attorney General, and the district attorney who prosecuted the defendant, and a court hearing to review the status of the defendant. The defendant may retain an expert for the examination, and if indigent, may have an expert appointed to do the examination. The defendant may petition the court for release at the hearing and has a right to have counsel at the hearing; however, the committed defendant is not entitled to be present at the hearing.

Trial to consider release: If the court determines that probable cause exists to believe that the defendant's mental abnormality has changed so that the defendant is not likely to commit a sex offense if released and therefore safe to be at large, the court shall schedule a trial on the issue. The defendant or Attorney General may request a jury trial. The defendant is entitled to be present at the trial and the Attorney General must represent the State at the trial. The Attorney General must also notify the victim of the proceedings. The same constitutional protections and criminal rules of law as applied at the initial trial for commitment also apply in this trial. The burden of proof is on the State to prove beyond a reasonable doubt that the defendant should not be released.

Petition of release: If the Secretary of Health and Human Services determines that the defendant's mental abnormality has changed so that the defendant is not likely to commit a sex offense if released, and therefore safe to be at large, the Secretary must authorize the defendant to petition the court for release and the petition is served upon the court and the Attorney General. The court must schedule a hearing, which must be a jury hearing if so requested by either the defendant or the Attorney General. The burden of proof is on the Attorney General who must establish beyond a reasonable doubt that the defendant should not be released.

Denial of Petition for Release: If a defendant files a petition without the approval of the Secretary of Health and Human Services, the court shall, if possible review the petition to determine whether it is based on frivolous grounds, and if so, deny the petition without a hearing. If the court determines the petition to be either frivolous or that the petitioner's condition has not changed and so remains a threat if released, then the court shall deny any subsequent petition from a committed defendant unless the petition contains facts regarding the defendant's condition that warrant a hearing.

Release of Confidential Information: G.S. 122F-13 authorizes release of certain confidential and privileged information and records regarding a defendant to the Attorney General and to a facility, institution, or agency with legal custody of a defendant in a secured facility for the purpose of satisfying notice requirements under G.S. 122F-4 and for determining whether a defendant is a sexual predator.

Sealed Evidentiary Records: G.S. 122F-14 provides that the defendant's psychological reports, drug and alcohol reports, treatment records, reports of a diagnostic center, medical records, or victim impact statements submitted to the court or admitted into evidence as part of the record must be sealed and opened only by order of the court.

Sex Offender Registry Required: A defendant who is committed under Chapter 122F and later released from commitment must register as a Sex Offender.

Constitutional Requirements for Involuntary Detention: G.S. 122F-16 requires that the care and treatment of a defendant involuntarily detained or committed under Chapter 122F meet constitutional requirements.

Return for Trial upon Regaining Capacity: G.S. 122F-17 provides that if a defendant committed under Chapter 122F who gains the capacity to proceed to trial, then the court must be so notified and the defendant returned for trial pursuant to G.S. 15A-1006.

EFFECTIVE DATE: Chapter 122F becomes effective December 1, 2008, but applies retroactively to any defendant charged with a sex offense against a child under the age of 16 years, and found incompetent to stand trial before, if the defendant has a mental abnormality unless the charge against the defendant was dismissed prior to December 1, 2008.

BACKGROUND: In Kansas v. Hendricks, 521 U.S. 346 (1997), the United State Supreme Court found that the Kansas Sexually Violent Predator Act, which provided for civil commitment of individuals with mental abnormalities (defined as a cognitive or acquired condition affecting the emotional or volitional capacity which predisposed the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others) satisfied substantive due proves requirements and did not violate the Constitution's double jeopardy prohibition or ban on ex post facto lawmaking as a civil commitment procedure.

H1253e1-SMTC-CSTC

HOUSE BILL 1253: Juvenile Code Revisions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 15, 2008
Introduced by:	Reps. Dickson, Jones, Haire	**Summary by:**	Emily Johnson Staff Attorney
Version:	PCS to First Edition H1253-CSTC		

SUMMARY: ***The PCS for HB 1253 adds a new Chapter 122F to the General Statutes. Chapter 122F creates a new civil commitment procedure that is available exclusively for the commitment of a defendant who: (i) is charged with committing a sex offense against a child under the age of 16 years, (ii) is found incompetent to proceed to trial, and (iii) who does not meet the criteria for involuntary commitment but does suffer from a mental abnormality. A mental abnormality is defined as "a mental condition affecting the defendant's emotional or volitional capacity that predisposes the person to commit sex offenses to a degree that makes the person a menace to the health and safety of others. The term also includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long term control, care, and treatment."***

CURRENT LAW: Part 7 of Article 5 of Chapter 122C (Mental Health) provides for the involuntary commitment of the mentally ill. Under G.S. 122C-261, individuals alleged to be mentally ill and dangerous to themselves or others may be taken into custody for examination. G.S. 122C-264 requires that if the examining physician or psychologist recommends commitment, the matter shall be calendared for hearing in district court. G.S. 122C-266 states that an individual may be held at a facility pending the hearing, but that individuals charged with a violent crime found incapable of proceeding may not be released until ordered following the district court hearing. G.S. 112C-268 requires the hearing to be held within 10 days of when the individual was taken into custody and provides that the respondent may be represented by counsel or have counsel appointed in accord with rules adopted by the Office of Indigent Defense Services. With the court's consent, counsel may in writing waive the respondent's presence. To support an impatient commitment order, the court must find by clear and convincing evidence that the respondent is mentally ill and dangerous to self or others. G.S. 122C-272 provides that the district court's judgment may be appealed to the Court of Appeals. G.S. 122C-276 provides for rehearings 15 days before the end of the initial inpatient commitment period to determine if commitment beyond the initial period is required.

BILL ANALYSIS: The PCS to HB 1253 provides that when a defendant who is charged with committing a sex offense against a child under the age of 16 years is found incompetent to proceed to trial, the presiding judge must also determine whether there are reasonable grounds to believe that the defendant either meets the criteria to be involuntarily committed under existing law (Part 7 of Article 5 of Chapter 122C) or has a mental abnormality.

Sections 1-5: If the judge finds reasonable grounds to believe that the defendant meets either the involuntary commitment criteria or has a mental abnormality, then the judge must enter a custody order to have the defendant evaluated for both conditions by a physician. The procedure to be followed for the evaluations is the procedure set out in Part 7 of Article 5 of Chapter 122C (Involuntary Commitment of the Mentally Ill). If the physician conducting the examination finds the defendant meets the criteria for involuntary commitment, then the defendant shall be involuntarily committed as provided by current law. (See Part 7 of Article 5 of Chapter 122C.) If the physician finds that the defendant does not meet the criteria for involuntary commitment but does have a mental abnormality, then the physician shall include that finding in the report provided to both the clerk of court and to the court. The court shall then refer the defendant to the Attorney General and Prosecutor's Review Committee created by the PCS to be reviewed for possible civil commitment under Chapter 122F of the General Statutes. The PCS also makes conforming changes to Part 7 of Article 5 of Chapter 122C.

Section 9: The PCS to HB 1253 would create a new chapter, Chapter 122F (Civil Commitment of Certain Sex Offenders) which establishes a new procedure for the civil commitment of a defendant who lacks the capacity to proceed to trial and who is determined to be a sexual predator.

Key Definitions: A **sexual predator** is defined as a defendant who:

(i) is charged with committing a sex offense against a child under the age of 16 years,

(ii) is found incompetent to proceed to trial, and

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A **mental abnormality** is defined as: "a mental condition affecting the defendant's emotional or volitional capacity that predisposes the person to commit sex offenses in a degree that makes the person a menace to the health and safety of others. The term includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long term control, care, and treatment."

Prosecutor's Review Commission: Under Chapter 122F, the Attorney General must appoint a Prosecutor's Review Committee. There is no set number for the Committee membership, but it must include a staff member of the Attorney General, a district attorney, and a victim's representative. The Attorney General or the Attorney General's designee serves as Chair of the Committee.

Referral of Cases: Cases of incompetent defendants who appear to meet the criteria for a sexual predator as defined above are referred to the Committee for review to determine whether probable cause exists to believe that the person is a sexual predator. The cases are referred in two ways:

1) By a court after it determines that a defendant lacks the capacity to stand trial, cannot be involuntarily committed, but may have a mental abnormality, or

2) By a facility, institution, or agency that has custody of an incompetent defendant charged with a sex offense who has been in secure facility but whose release from the facility is pending.

Petition for Probable Cause Review: If the Committee finds that probable cause exists to support the allegation that the defendant is a sexual predator, the Attorney General must petition the court in the jurisdiction where the defendant committed the offense to make a probable cause determination on that issue.

Probable Cause Determination: Once the petition is filed, the court determines whether probable cause exists. If probable cause is found, the defendant is taken into custody if not already confined in a secure facility. The defendant has the right to contest the probable cause determination as to whether the defendant is a sexual predator at a separate hearing. If probable cause is found, the defendant is transferred to a secure facility for an evaluation by a qualified expert approved by the court as to whether the defendant is a sexual predator.

Trial: A trial is scheduled in Superior Court within 60 days after the completion of the probable cause hearing if probable cause is found. A jury trial may be requested by either the defendant or the Attorney General, and if requested shall be granted. Otherwise, the trial is before a judge in the county where the offense was committed. Once the trial date is set, the Attorney General must notify the victim, in a timely manner of the time, date, and location of the trial. The defendant has a right to counsel at the trial and, if indigent, shall have counsel appointed if so requested. If an examination of the defendant is required, the defendant may retain his or her own qualified expert to conduct the examination. If the defendant is indigent and requests his or her own expert the court must determine whether the expert's services are necessary and whether the expert's compensation request is reasonable.

Standard for Determining Predator Status: At the trial the court determines two issues:

(i) whether the defendant committed the act with which the defendant is charged, and if so,

(ii) whether the defendant is a sexual predator.

The standard of proof for both issues is "beyond a reasonable doubt."

Issue 1: Commission of Charged Act - With regard to the first issue, the court must conduct an evidentiary hearing in which the criminal rules of evidence and constitutional rights available to defendants at criminal trials, other than the right not to be tried while lacking the capacity to stand trial, apply. The court must make specific findings on all of the following:

- whether the defendant committed the act with which he or she is charged,
- the extent to which the defendant's incompetence or developmental disability affected the outcome of the hearing,
- the extent to which the evidence could be reconstructed without the assistance of the defendant, and
- the strength of the prosecution's case.

If the court finds beyond a reasonable doubt that the defendant committed the act as charged, then the court must enter a final order on that issue that is appealable by the defendant and proceed to the second issue.

Issue 2: Determination of whether the defendant is a sexual predator. - The trial court or jury must determine beyond a reasonable doubt that the defendant is a sexual predator. A jury determination that the defendant is a sexual predator must be by unanimous verdict. If the court or jury determine the defendant to be a sexual predator, then the defendant is committed to the custody of the Department of Health and Human Services for control, care, and treatment until the time when the defendant's mental abnormality has changed to the extent the defendant is safe to be at large and may be released as provided by Chapter 122F.

Control, Care and Treatment of Defendant: A defendant committed under Chapter 122F must be housed in a secure facility operated by the Department of Health and Human Services and shall be segregated at all times from other patients under the supervision of the Department. However, the Department of Health and Human Services may enter into an interagency agreement with the Department of Correction for the control, care, and treatment of the defendant, in which case the defendant would be housed in a secure facility managed by the Department of Correction. In that situation, the Department of Correction must, to the degree possible, house the defendant separately from other offenders in the custody of the Department of Correction.

Mistrial: In the event of a mistrial, the defendant must be held in an appropriate secure facility, which would include a State or local detention facility, until another trial is conducted. A subsequent trial must be conducted within 90 days of the mistrial unless the subsequent trial is continued.

Right of Appeal: Both the determination of whether the defendant committed the unlawful act with which the defendant is charged and the determination that the defendant is a sexual predator can be appealed by the defendant.

Periodic evaluation: Annually there must be both an examination of the defendant to determine the defendant's mental condition with the results reported to the court, the Attorney General, and the district attorney who prosecuted the defendant, and a court hearing to review the status of the defendant. The defendant may retain an expert for the examination, and if indigent, may have an expert appointed to do the examination. The defendant may petition the court for release at the hearing and has a right to have counsel at the hearing; however, the committed defendant is not entitled to be present at the hearing.

Trial to consider release: If the court determines that probable cause exists to believe that the defendant's mental abnormality has changed so that the defendant is not likely to commit a sex offense if released and therefore safe to be at large, the court shall schedule a trial on the issue. The defendant, Attorney General, or district attorney may request a jury trial. The defendant is entitled to be present at the trial and the Attorney General must represent the State at the trial. The Attorney General must also notify the victim of the proceedings. The same constitutional protections and criminal rules of law as applied at the initial trial for commitment also apply in this trial. The burden of proof is on the State to prove beyond a reasonable doubt that the defendant should not be released.

Petition of release: If the Secretary of Health and Human Services determines that the defendant's mental abnormality has changed so that the defendant is not likely to commit a sex offense if released, and therefore safe

to be at large, the Secretary must authorize the defendant to petition the court for release and the petition is served upon the court and the Attorney General. The court must schedule a hearing, which must be a jury hearing if so requested by either the defendant or the Attorney General. The burden of proof is on the Attorney General who must establish beyond a reasonable doubt that the defendant should not be released.

Denial of Petition for Release: If a defendant files a petition without the approval of the Secretary of Health and Human Services, the court shall, if possible review the petition to determine whether it is based on frivolous grounds, and if so, deny the petition without a hearing. If the court determines the petition to be either frivolous or that the petitioner's condition has not changed and so remains a threat if released, then the court shall deny any subsequent petition from a committed defendant unless the petition contains facts regarding the defendant's condition that warrant a hearing.

Release of Confidential Information: G.S. 122F-13 authorizes release of certain confidential and privileged information and records regarding a defendant to the Attorney General and to a facility, institution, or agency with legal custody of a defendant in a secured facility for the purpose of satisfying notice requirements under G.S. 122F-4 and for determining whether a defendant is a sexual predator.

Sealed Evidentiary Records: G.S. 122F-14 provides that the defendant's psychological reports, drug and alcohol reports, treatment records, reports of a diagnostic center, medical records, or victim impact statements submitted to the court or admitted into evidence as part of the record must be sealed and opened only by order of the court.

Sex Offender Registry Required: A defendant who is committed under Chapter 122F and later released from commitment must register as a Sex Offender.

Constitutional Requirements for Involuntary Detention: G.S. 122F-16 requires that the care and treatment of a defendant involuntarily detained or committed under Chapter 122F meet constitutional requirements.

Return for Trial upon Regaining Capacity: G.S. 122F-17 provides that if a defendant committed under Chapter 122F who gains the capacity to proceed to trial, then the court must be so notified and the defendant returned for trial pursuant to G.S. 15A-1006.

Transition Provision: Section 11 of the PCS is a "transition" provision that authorizes the involuntary commitment of a defendant who may be reviewed for commitment under Chapter 122F when it becomes effective. The authorization for involuntary commitment on the grounds of a mental abnormality for a defendant charged with a sex offense against a child under 16 years who is found to be both incompetent and to have a mental abnormality expires on December 1, 2008, when Chapter 122F becomes effective.

EFFECTIVE DATE: Chapter 122F becomes effective December 1, 2008, but applies retroactively to any defendant charged with a sex offense against a child under the age of 16 years, and found incompetent to stand trial before, if the defendant has a mental abnormality unless the charge against the defendant was dismissed prior to December 1, 2008.

BACKGROUND: In Kansas v. Hendricks, 521 U.S. 346 (1997), the United State Supreme Court found that the Kansas Sexually Violent Predator Act, which provided for civil commitment of individuals with mental abnormalities (cognitive or acquired condition affecting the emotional or volitional capacity which predisposed the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others) satisfied substantive due proves requirements and did not violate the Constitution's double jeopardy prohibition or ban on ex post facto lawmaking as a civil commitment procedure.

H1253e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 5

HOUSE BILL 2340*
Committee Substitute Favorable 6/9/08
Committee Substitute #2 Favorable 6/24/08
Fourth Edition Engrossed 6/26/08
Committee Substitute #3 Favorable 7/7/08

Short Title: Transporting Children in Open Bed of Vehicle. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PROTECTION OF CHILDREN WHO RIDE IN THE BACK OF PICKUP TRUCKS OR OPEN BEDS OF VEHICLES BY RAISING THE MINIMUM AGE, REMOVING THE EXEMPTION THAT MAKES ALLOWANCE FOR SMALL COUNTIES, AND MODIFYING THE EXEMPTION THAT MAKES AN ALLOWANCE FOR AGRICULTURAL ENTERPRISES, AND INCREASE THE PENALTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-135.2B reads as rewritten:

"**§ 20-135.2B. Transporting children under ~~12~~ 16 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.**

(a) The operator of a vehicle having an open bed or open cargo area shall ~~insure~~ ensure that no child under ~~12~~16 years of age is transported in the bed or cargo area of that vehicle. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) An adult is present in the bed or cargo area of the vehicle and is supervising the child.

(2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the Commissioner.

(3) An emergency situation exists.

(4) The vehicle is being operated in a parade pursuant to a valid permit.

(5) The vehicle is being operated in an agricultural ~~enterprise.~~enterprise, including providing transportation to and from the principal place of the agricultural enterprise.

~~(6) The vehicle is being operated in a county that has no incorporated area with a population in excess of 3,500.~~

(c) Any person violating this section shall have committed an infraction and shall pay a penalty of not more than twenty-five dollars ~~($25.00).~~($25.00), even if more than one child less than 16 years of age is riding in the open bed or open cargo area of a vehicle. ~~Conviction of an infraction under this section has no consequence other than payment of a penalty.~~ A person found responsible for a violation of this section ~~may not~~ shall be assessed court costs.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section. A violation of this section shall not constitute negligence per se."

SECTION 2. This act becomes effective October 1, 2008, and applies to offenses committed on or after that date.

HOUSE BILL 2340:
Transporting Children in Open Bed of Vehicle

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 10, 2008
Introduced by:	Reps. Weiss, Pierce, Earle, Glazier	**Summary by:**	William R. Gilkeson
Version:	Fifth Edition		Committee Counsel

SUMMARY: ***The 5th Edition of House Bill 2340 would increase the minimum age of children allowed to ride in open beds of vehicles to 16, remove the exemption for vehicles operated in smaller counties, clarify that the exemption for vehicles operated in an agricultural enterprise includes providing transportation to and from the agricultural enterprise, and change the penalties for violating the prohibition.***

CURRENT LAW: G.S. 20-135.2B prohibits an operator of a vehicle from allowing a child under the age of 12 to ride in an open bed or open cargo area of the vehicle. The statute provides that the prohibition does not apply under any of the following conditions:

- A supervising adult is with the child.
- The child is secured by a seat belt.
- An emergency situation exists.
- The vehicle is being operated in a parade with a valid permit.
- The vehicle is being operated in an agricultural enterprise.
- The vehicle is being operated in a county with no incorporated area with a population in excess of 3,500. (The following 32 counties are exempt under this provision: Alexander, Alleghany, Ashe, Avery, Bertie, Camden, Caswell, Cherokee, Clay, Currituck, Duplin, Franklin, Gates, Graham, Green, Hyde, Jackson, Jones, Macon, Madison, Mitchell, Montgomery, Northhampton, Pamlico, Pender, Perquimans, Polk, Swain, Tyrrell, Warren, Yadkin, and Yancey.)

A violation of the prohibition is an infraction with a penalty of $25.00. A violation carries no other consequence, and the person violating the prohibition may not be assessed court costs.

BILL ANALYSIS: House Bill 2340 would do the following:

- Increase the minimum age at which a child would be allowed to ride in the open bed or open cargo area of a vehicle from 12 to 16.
- Remove the exemption provided in the current statute where the vehicle is being operated in one of the smaller counties listed above.
- Clarify that the exemption for vehicles operated in an agricultural enterprise includes providing transportation to and from the agricultural enterprise.
- Amend the penalty for violating the prohibition. It would be a maximum penalty of $25.00, even if more than one child under the age of 16 is riding in the open bed or cargo area of the vehicle. The bill would mandate that a violator be assessed court costs. The sentence saying conviction of the infraction "has no consequence other than payment of a penalty" is stricken from the statute.
- Specifies that a violation would not constitute negligence per se.

EFFECTIVE DATE: The bill would become effective October 1, 2008, and would apply to offenses committed on or after that date.

BACKGROUND: The bill was recommended by the Child Fatality Task Force.

Heather Fennell contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 2340 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 1, line #25

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 adding after "parade" a period and

5 the following: "pursuant to a valid permit."

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 15, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Jane Royall	NC Family Policy Council
Kerry Swearingen	SAS
Don McCorquodale	SAS
[illegible]	NCMA
Elizabeth Dalton	NCRMA
Rick Zechini	NCAR
Laura Erb Pisoni	NC Cons. Network
Al Ripley	NC Justice Ctr
Bill Rowe	" "
Pete Jarvis	Gov Office
Shannon Hanes	Dept. of Juvenile Justice + Delinquency Prevention

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 15, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Selena Shore	NC Pediatric Society
Michelle Frazier	MFS
Susan Valauri	Nationwide
NCHA	P&P
Soren Schmidt	Action for Children
Selena Childs	CFTE
AL DEITCH	DOA | YAFO
Boyd Gamble	City of Charlotte
Sarah Preston	ACLU-NC
Ken Melton	Ken Melton & Assoc.
Patrick Buffkin	NMRS

North Carolina General Assembly

SENATE JUDICIARY I COMMITTEE
(Civil)

July 16, 2008, 10 a.m.

MINUTES

The Senate Judiciary I (Civil) Committee met Wednesday, July 16, 2008 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 10:20 a.m.

Also in attendance with Chairman Nesbitt were Vice Chairman Phil Berger, Senator Harry Brown, Senator Andrew Brock, Senator Pete Brunstetter, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator Tony Rand, Senator Richard Stevens and Senator Jerry Tillman. Staff present were committee counsels Erika Churchill, Bill Gilkeson, Kara McGraw, Hal Pell, Research Assistant Denise Huntley and Committee Assistant Jessica Kozma Bennett

A meeting notice was sent to membership and staff July 15.

House Bill 2492

Chairman Nesbitt began the meeting with a discussion about House Bill 2492, a bill amending requirements for release of juvenile identification when an offender has escaped from custody. A Proposed Committee Substitute was distributed to members and adopted for discussion by a motion by Senator Brown.

Senator McKissick was recognized by Chairman Nesbitt to give a subcommittee report on the bill. Senator McKissick told the committee that the subcommittee met and worked through details on the bill. Senator Kinnaird, who served on the subcommittee, reported that subcommittee members were satisfied with protecting the rights of juveniles. Representative Justus commented that the bill was one of the most discussed bills of the session. Chairman Nesbitt then recognized Mr. Gilkeson to explain the bill, and Mr. Gilkeson reviewed a bill summary included in these minutes.

Senator Rand asked whether people in an area would be notified if an offender had escaped. Senator Kinnaird said that less than three out of ten escapees fall under this, noting the usually offenders are found within a 24-hour period. Senator Rand suggested that listing an escapees hometowns.

An amendment was then offered by Senator Kinnaird; the amendment passed unanimously.

Senator Brunstetter then moved for favorable report as amended, to roll into a new PCS. Motion carried unanimously.

House Bill 1253

A PCS was distributed to members and adopted for discussion by a motion by Senator Brown. A technical amendment was submitted by Senator Rand. Chairman Nesbitt read the amendment, and the amendment was adopted by a motion by Senator Rand. Senator Rand moved for adoption of a second PCS. Motion carried unanimously.

The meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Senator Martin Nesbitt, Chairman

Jessica Kozma Bennett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 2492

Committee Substitute Favorable 6/17/08

Short Title: Amend Release of Juvenile Escape Info. (Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REQUIREMENTS FOR RELEASE OF JUVENILE IDENTIFICATION UPON ESCAPE FROM CUSTODY 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. 7B-3102 reads as rewritten:

"**§ 7B-3102. Disclosure of information about juveniles who escape.**

(a) Notwithstanding G.S. 7B-2102(d) or any other law to the contrary, within 24 hours of the time a juvenile escapes from custody the Department shall release to the public the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile ~~escaped;~~escaped, or if the juvenile's escape was not from an institution, the circumstances and location of the escape; and a statement, based on the juvenile's record, of the level of concern of the Department as to the juvenile's threat to self or to others, if:

(1) The juvenile escapes from a detention facility, or secure custody, and the juvenile ~~is alleged to have committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.~~has been adjudicated delinquent or is alleged to be delinquent.

(2) The juvenile escapes ~~from a youth development center, and the juvenile has been adjudicated delinquent for an offense that would be a felony or a Class A1 misdemeanor if committed by an adult.~~and the juvenile has been committed to the Department for placement in a youth development center in accordance with G.S. 7B-2513.

(b) When a juvenile escapes from a detention facility or secure custody, and the juvenile has been adjudicated ~~for an offense that would be a Class 1, 2, or 3 misdemeanor if committed by an adult;~~undisciplined, the Department may release to the public within 24 hours the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile escaped, or if the juvenile's

escape was not from an institution, the circumstances and location of the escape; and a statement, based on the juvenile's record, of the level of concern of the Department as to the juvenile's threat to self or to others. The provisions of this subsection shall also apply if the juvenile's parents or guardians request that the information be released or the Department determines that the escape presents a danger to the juvenile or to the public. The Department shall make a reasonable effort to notify the parents or guardians of the juvenile prior to release of the information to the public.

(c) If a juvenile subject to subsection (a) or (b) of this section is returned to custody before the disclosure required or permitted is made, the Department shall not make the disclosure.

(d) The Department shall maintain a photograph of every juvenile in its custody."

SECTION 2. This act becomes effective October 1, 2008.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2492

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

H2492-ARR-133 [v.1]

Date _____,2008

Comm. Sub. [YES]
Amends Title [NO]
Second Edition H2492-CSRR-65

Senator _____

moves to amend the bill on page 1, lines 15 through 24,
by rewriting those lines to read:

"threat to self or to others, ~~if:~~if

~~(1) The~~ the juvenile escapes from a detention facility, secure custody, or a youth development center and the juvenile ~~is alleged to have committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.~~has been adjudicated delinquent.

~~(2) The juvenile escapes from a youth development center, and the juvenile has been adjudicated delinquent for an offense that would be a felony or a Class A1 misdemeanor if committed by an adult.~~ "

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 2492

Committee Substitute Favorable 6/17/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2492-CSRR-65 [v.3]

7/15/2008 4:22:22 PM

Short Title: Amend Release of Juvenile Escape Info. (Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REQUIREMENTS FOR RELEASE OF JUVENILE IDENTIFICATION UPON ESCAPE FROM CUSTODY, BASED ON RECOMMENDATIONS BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-3102 reads as rewritten:

"**§ 7B-3102. Disclosure of information about juveniles who escape.**

(a) Notwithstanding G.S. 7B-2102(d) or any other law to the contrary, within 24 hours of the time a juvenile escapes from custody the Department shall release to the public the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile ~~escaped;~~escaped, or if the juvenile's escape was not from an institution, the circumstances and location of the escape; and a statement, based on the juvenile's record, of the level of concern of the Department as to the juvenile's threat to self or to others, ~~if:~~if either of the following applies:

(1) The juvenile escapes from a detention facility, or secure custody, and the juvenile ~~is alleged to have committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.~~has been adjudicated delinquent.

(2) The juvenile escapes ~~from a youth development center, and the juvenile has been adjudicated delinquent for an offense that would be a felony or a Class A1 misdemeanor if committed by an adult.~~and the juvenile has been committed to the Department for placement in a youth development center in accordance with G.S. 7B-2513.

(b) When a juvenile escapes from a detention facility or secure custody, ~~and the juvenile has been adjudicated for an offense that would be a Class 1, 2, or 3 misdemeanor if committed by an adult,~~ the Department may release to the public within

24 hours the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile escaped, or if the juvenile's escape was not from an institution, the circumstances and location of the escape; and a statement, based on the juvenile's record, of the level of concern of the Department as to the juvenile's threat to self or to ~~others.~~ others if both of the following apply:

(1) The juvenile is alleged to have committed an offense that would be a felony if committed by an adult.

(2) The Department determines, based on the juvenile's record, that the juvenile presents a danger to self or others.

(c) If a juvenile subject to subsection (a) or (b) of this section is returned to custody before the disclosure required or permitted is made, the Department shall not make the disclosure.

(d) The Department shall maintain a photograph of every juvenile in its custody.

(e) Before information is released to the public under this section, the Department shall make a reasonable effort to notify a parent, legal guardian, or custodian of the juvenile."

SECTION 2. This act becomes effective October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H 1

HOUSE BILL 1253

Short Title:	Juvenile Code Revisions.	(Public)
Sponsors:	Representatives Dickson, Jones, Haire (Primary Sponsors); Alexander, Cotham, Glazier, Harrison, Insko, Kiser, and Samuelson.	
Referred to:	Juvenile Justice, if favorable, Judiciary II.	

April 2, 2007

A BILL TO BE ENTITLED

AN ACT TO REVISE THE JUVENILE CODE WITH REGARD TO SECURE CUSTODY ORDERS, DELINQUENCY HISTORY LEVELS, AND DISPOSITIONAL LIMITS OF DELINQUENT JUVENILES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1903(d) reads as rewritten:

"(d) The court may order secure custody for a juvenile who is alleged to have substantially violated the conditions of the juvenile's probation or post-release ~~supervision, but only if the juvenile is alleged to have committed acts that damage property or injure persons.~~ supervision."

SECTION 2. G.S. 7B-2507(b) reads as rewritten:

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

(1) For each prior adjudication of a Class A through E felony offense, 4 points.

(2) For each prior adjudication of (i) a Class F through I felony ~~offense or~~ offense, (ii) a Class A1 misdemeanor offense, or (iii) an offense in violation of G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors), 2 points.

(3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, except offenses in violation of G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors), 1 point.

(4) If the juvenile was on probation at the time of offense, 2 points."

SECTION 3. G.S. 7B-2508(a) reads as rewritten:

"(a) Offense Classification. – The offense classifications are as follows:

(1) Violent – Adjudication of a Class A through E felony offense;

(2) Serious – Adjudication of (i) a Class F through I felony ~~offense or~~ offense, (ii) a Class A1 ~~misdemeanor;~~ misdemeanor, or (iii) an offense in violation of G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors);

(3) Minor – Adjudication of a Class 1, 2, or 3 ~~misdemeanor.~~ misdemeanor, except offenses in

violation of G.S. 14-202.2 (indecent liberties between children), G.S. 14-269 (carrying concealed weapons), or G.S. 14-269.7(a) (prohibitions on handguns for minors)."

SECTION 4. G.S. 7B-2510(e) reads as rewritten:

"(e) If the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation set by the court, the court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new disposition at the next higher level on the disposition chart in G.S. 7B-2508. In the court's discretion, ~~part of the new disposition~~ if the juvenile's disposition is not raised to a higher level of disposition, the court may include an order of confinement in a secure juvenile detention facility for up to twice the term authorized by ~~G.S. 7B-2508.~~ G.S. 7B-2508 for the juvenile's dispositional level."

SECTION 5. G.S. 7B-1501 is amended by adding a new subdivision to read:

"(21a) Prior adjudication. – Any adjudication that occurred before the current date of disposition which is not a part of some related transaction for the current offense."

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1253
PROPOSED SENATE COMMITTEE SUBSTITUTE H1253-CSLH-48 [v.4]

7/16/2008 9:35:15 AM

Short Title: Sex Offender/Incapacity to Proceed. (Public)

Sponsors:

Referred to:

April 2, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CIVIL COMMITMENT OF CERTAIN SEX OFFENDERS WHO LACK THE CAPACITY TO PROCEED TO TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1003(a) reads as rewritten:

"(a) ~~When~~ Except as provided in G.S. 15A-1003.1, when a defendant is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a violent crime and that he was found incapable of proceeding."

SECTION 2. Article 56 of Chapter 15A of the General Statutes is amended by adding the following sections to read:

"**§ 15A-1003.1. Referral of incapable defendant charged with sex offense against a child less than 16 years of age for commitment evaluation, review, and proceedings; disposition of defendant.**

(a) When a defendant charged with a sex offense as defined in G.S. 122F-2 is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as the judge determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary

commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes or the criteria for commitment under Chapter 122F of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, the judge shall make findings of fact and issue a custody order in the same manner and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. The judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a sex offense as defined in G.S. 122F-2 and that the defendant was found incapable of proceeding.

(b) Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes except as follows:

(1) If the physician conducting the examination finds that the defendant meets the criteria for involuntary commitment, the defendant shall be involuntarily committed pursuant to the provisions of Part 7 of Article 5 of Chapter 122C.

(2) If the physician conducting the examination finds that the defendant does not meet the criteria for involuntary commitment, the physician shall find whether the defendant has a mental abnormality as defined in G.S. 122F-2. If the physician determines that the defendant does have a mental abnormality, the physician shall include that determination in the findings and shall provide those findings to both the clerk of court and to the appropriate court as provided by Chapter 122C. The court shall refer the case of any defendant who does not meet the criteria for involuntary commitment but who does have a mental abnormality as defined in G.S. 122F-2 for review by the Prosecutor's Review Committee and the Attorney General and possible commitment of the defendant under Chapter 122F of the General Statutes. The court shall further order that the defendant be held in the custody of the Department of Health and Human Services for secure confinement and treatment until the review by the Prosecutor's Review Committee and the Attorney General, and any subsequent hearing or trial is completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of the defendant after conducting a review pursuant to Chapter 122F of the General Statutes then the court shall order the defendant be released or otherwise committed as appropriate.

(c) The court may make appropriate orders for the temporary detention of the defendant pending that proceeding.

(d) Evidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings."

SECTION 3. G.S. 15A-1004 reads as rewritten:

"**§ 15A-1004. Orders for safeguarding of defendant and return for trial.**

(a) When a defendant is found to be incapable of proceeding, the trial court must make appropriate orders to safeguard the defendant and to ensure his return for trial in the event that he subsequently becomes capable of proceeding.

(b) If the defendant is not placed in the custody of a hospital or -other institution in a proceeding for involuntary civil ~~commitment,~~ commitment or civil commitment under Chapter 122F of the General Statutes appropriate orders may include any of the procedures, orders, and conditions provided in Article 26 of this Chapter, Bail, specifically including the power to place the defendant in the custody of a designated person or organization agreeing to supervise him.

(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil ~~commitment,~~ commitment or commitment under Chapter 122F of the General Statutes, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. If the defendant was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate.

(d) If the defendant is placed in the custody of a hospital or institution pursuant to proceedings for involuntary civil commitment, or if the defendant is placed in the custody of another person pursuant to subsection (b), the orders of the trial court must require that the hospital, institution, or individual report the condition of the defendant to the clerk at the same times that reports on the condition of the defendant-respondent are required under Part 7 of Article 5 of Chapter 122C of the General Statutes, or more frequently if the court requires, and immediately if the defendant gains capacity to proceed. The order must also require the report to state the likelihood of the defendant's gaining capacity to proceed, to the extent that the hospital, institution, or individual is capable of making such a judgment.

(e) The orders must require and provide for the return of the defendant to stand trial in the event that he gains capacity to proceed, unless the charges have been dismissed pursuant to G.S. 15A- 1008, and may also provide for the confinement or pretrial release of the defendant in that event.

(f) The orders of the court may be amended or supplemented from time to time as changed conditions require."

SECTION 4. Article 56 of Chapter 15A of the General Statutes is amended by adding a new section to read;

"**§ 15A-1010. Referral of defendant who is incapable of proceeding to trial and charged with sex offense against a child less than 16 years of age for civil commitment review prior to dismissal of case.**

Notwithstanding G.S. 15A-1008 or G.S. 15A-1009, prior to dismissing the charges against a defendant who is both charged with a sex offense as defined in G.S. 122F-2 and found incapable of proceeding to trial, the court shall determine whether the defendant's case was referred for review under Chapter 122F of the General Statutes, and if not whether such referral is appropriate. If the court determines that referral is appropriate, then the court shall not dismiss the case at that time but shall refer the case for review to the Prosecutor's Review Committee and the Attorney General pursuant to Chapter 122F of the General Statutes."

SECTION 5. G.S. 122C-261(e) reads as rewritten:

"(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to ~~G.S. 15A-1003,~~ G.S. 15A-1003 or G.S. 15A-1003.1, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State."

SECTION 6. G.S. 122C-263(b) reads as rewritten:

"(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;

(2) The custody order states that the respondent was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and he was found incapable of proceeding; or

(3) Repealed by Session Laws 1987, c. 596, s. 3.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252."

SECTION 7. G.S. 122C-266(b) reads as rewritten:

"(b) If the custody order states that the respondent was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and that he was found incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing."

SECTION 8. G.S. 122C-268(c) reads as rewritten:

"(c) If the respondent's custody order indicates that he was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving an assault with a deadly weapon, and that he was found incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found incapable of proceeding may represent the State's interest at the hearing."

SECTION 9. The General Statutes are amended by adding a new Chapter to read:

"Chapter 122F.

"Civil Commitment of Certain Sex Offenders.

"§ 122F-1. Legislative findings.

The General Assembly finds that a group of individuals who commit sexual offenses against children but who are found incapable of proceeding to trial exists who require involuntary civil commitment in a secure facility for long-term control, care, and treatment. The General Assembly further finds that without very close supervision there is a high likelihood that these offenders will repeat their sexual offenses against children. Although these offenders may be incapable of proceeding to trial, they may not be diagnosed as mentally ill and therefore can not be involuntarily committed under involuntary commitment proceedings that pertain to persons who are mentally ill and a danger to self or others. Because the existing civil commitment process is inadequate to address the special needs of these sexual offenders, the risks that they present to society, and the likelihood of repeat offenses against children, the General Assembly has determined that a separate, involuntary civil commitment process for the long-term control, care, and treatment of these sexual offenders is necessary.

"§ 122F-2. Definitions.

The following definitions apply in this Chapter:

(1) Court.—The appropriate Superior Court in the Superior Court Division of the General Court of Justice.

(2) Mental abnormality.– A mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sex offenses in a degree constituting such person a menace to the health and safety of others. The term includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long-term control, care, and treatment.

(3) Sex offense. The term includes any of the offenses set out in this subdivision if the offense is committed against a child less than 16 years of age. The term also includes a solicitation or conspiracy to commit any of these offenses against a child less than 16 years of age and aiding and abetting any of these offenses if committed against a child less than 16 years of age.

a. G.S. 14-27.2 (first degree rape).
b. G.S. 14-27.3 (second degree rape).
c. G.S. 14-27.4 (first degree sexual offense).
d. G.S. 14-27.5 (second degree sexual offense)
e. G.S. 14-27.5A (sexual battery)
f. G.S. 14-27.6 (attempted rape or sexual offense)
g. G.S. 14-27.7 (intercourse and sexual offense with certain victims)
h. 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).
i. G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude).
j. G.S. 14-178 (incest between near relatives).

k. G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency).
l. G.S. 14-190.9(a1)(felonious indecent exposure).
m. G.S. 14-190.16 (first degree sexual exploitation of a minor).
n. G.S. 14-190.17 (second degree sexual exploitation of a minor).
o. G.S. 14-190.17A (third degree sexual exploitation of a minor)
p. G.S. 14-190.18 (promoting prostitution of a minor).
q. G.S. 14-190.19 (participating in the prostitution of a minor).
r. G.S. 14-202.1 (taking indecent liberties with children).
s. G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act).

(4) Sexual predator.– A person who: (i) is charged with committing a sex offense; (ii) is found incapable of proceeding to trial, and (iii) suffers from a mental abnormality.

"**§ 122F-3. Scope of Chapter; referral of defendant for review and possible civil commitment as sexual predator.**

Civil commitment pursuant to this Chapter is available only for a defendant who is charged with a sex offense, found incapable of proceeding to trial, and determined to have a mental abnormality. A defendant who is charged with a sex offense and determined to be incapable of proceeding to trial may be referred for review and determination of whether the defendant is a sexual predator under this Chapter by either a court pursuant to G.S. 1003.1 or by a facility, institution or agency that has custody of the defendant pursuant to G.S. 122F-4.

"**§ 122F-4. Release of certain defendants from confinement in secure facility.**

(a) No release of certain defendants from secure facility without notice.– No facility, institution, or agency that has legal custody of a defendant who: (i) is charged with a sex offense but found incapable of proceeding to trial, and (ii) is lawfully confined in a secure facility shall release the defendant without providing notice of the pending release to the Attorney General, the Prosecutor's Review Committee, and the victim and the victim's parent or legal guardian at least 90 days before the release.

(b) Information to be provided to the victim and the victim's parent or legal guardian, Attorney General, and Prosecutor Review Committee.– The facility, institution, or agency with legal custody of the defendant shall provide to the victim and the victim's parent or legal guardian, the Attorney General, and the Prosecutor's Review Committee all of the following:

(1) The defendant's name, identifying factors, anticipated future residence, and offense history.
(2) The documentation of institutional adjustment and any treatment received by the sexual predator.

(c) Immunity.– The facility, institution, or agency with custody of the defendant, its employees, officials, individuals contracting, appointed, or volunteering to perform services under this Chapter, and the Prosecutor's Review Committee established in G.S. 122F-5 are immune from civil or criminal liability for any good-faith conduct under this Chapter.

"**§ 122F-5. Prosecutor's Review Committee; scope of review; membership requirements.**

(a) Committee appointed; membership.– The Attorney General shall appoint a Prosecutor's Review Committee. The Committee shall include a member of the staff of the Attorney General, a district attorney, and a victim's representative. The Attorney General or the Attorney General's designee shall be the chair of the Committee.

(b) Duties and scope of review.– The Prosecutor's Review Committee shall review the report and records of each person referred to the committee by the court and of each person for whom the committee receives notice of a pending release under G.S. 122F-4 to determine whether or not probable cause exists to believe the person is a sexual predator. The Prosecutor's Review Committee shall make the probable cause determination within 30 days of receiving the report and records from the court or facility, institution, or agency as appropriate. In addition to the records and reports considered by the court referring the defendant's case pursuant to G.S. 15A-1003.1, or the facility, institution, or agency notifying the Committee of a pending release of a defendant, the committee shall also consider information provided by the district attorney who prosecuted the defendant.

"**§ 122F-6. Petition for probable cause determination.**

When the Prosecutor's Review Committee has determined that probable cause exists to support the allegation that the defendant is a sexual predator, the Attorney General shall file a petition with the court in the jurisdiction where the person committed the offense and shall notify the victim and the victim's parent or legal guardian and the district attorney in the jurisdiction where the defendant was charged with the offense that the committee found that probable cause exists. The Attorney General shall also notify the victim and the victim's parent or legal guardian of the time, date, and location of the probable cause hearing before the court. The petition, which must be filed within 30 days of the probable cause determination by the Prosecutor's Review Committee, shall request that the court make a probable cause determination as to whether the person is a sexual predator. The petition shall allege that the defendant is a sexual predator and shall state sufficient facts that would support a probable cause allegation.

"**§ 122F-7. Determination of probable cause; taking person into custody; hearing; evaluation.**

(a) Determination of probable cause. – Upon filing of a petition under G.S. 122F-6, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexual predator. If the court determines that probable cause exists to believe that the person is a sexual predator, the person shall be taken into custody if he or she is not already confined in a secure facility.

(b) Notice and hearing to contest probable cause.– Immediately upon being taken into custody pursuant to subsection (a) of this section, the person shall be provided with notice of the opportunity to appear in person at a hearing to contest probable cause as to whether the detained person is a sexual predator. This hearing shall be held within 72 hours after a person is taken into custody pursuant to subsection (a) of this section. At this hearing the court shall do all of the following:

(1) Verify the detainee's identity.

(2) Receive evidence and hear arguments from the person and the district attorney or Attorney General as appropriate.

(3) Determine whether probable cause exists to believe that the person is a sexual predator.

The State may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) Defendant's rights at hearing to contest probable cause.– At the hearing to contest probable cause as provided in subsection (b) of this section, the detained person has all of the following rights in addition to any rights previously specified:

(1) To be represented by counsel.

(2) To present evidence on the person's behalf.

(3) To cross-examine witnesses who testify against the person.

(4) To view and copy all petitions and reports in the court file.

(d) Evaluation of defendant if probable cause found.– If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility including, but not limited to, a local or regional detention facility for an evaluation as to whether the person is a sexual predator. The evaluation shall be conducted by a qualified expert approved by the court at the probable cause hearing.

"**§ 122F-8. Trial; trier of fact; continuation of trial; assistance of counsel; access of examiners to person; payment of expenses.**

(a) Authority of Attorney General and district attorney to represent the State in trial for civil commitment.—Both the Attorney General and the district attorney in the jurisdiction where the defendant committed the sex offense may represent the State in the trial for civil commitment pursuant to this section and G.S. 122F-9; however, if venue for the civil commitment trial is the jurisdiction where the defendant was charged with the sex offense, then the Attorney General shall refer the case to the appropriate district attorney in that jurisdiction unless ordered otherwise by the Court.

(b) Trial schedule; request for jury trial; continuation of trial; notice to victim and victim's parent or legal guardian.– Within 60 days after the completion of a hearing held pursuant to G.S. 122F-6 in which probable cause was found, the court shall conduct a trial to determine: (i) whether the person committed the act with which the defendant is charged and, if so, (ii) whether the person is a sexual predator. Within 30 days after the determination of probable cause by the court pursuant to G.S. 122F-7, the person, or the district attorney or Attorney General as appropriate, may request, in writing, that the trial be before a jury. If such a request is made, the court shall schedule a trial before a jury at the next available date in the superior court in the county where the offense was committed. If no request is made, the trial shall be before a judge in the county where the offense was committed. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General or the district attorney as appropriate shall notify the victim and the victim's parent or legal guardian, in a timely manner, of the time, date, and location of the trial.

(c) Assistance of counsel; access of examiners to person; payment of expenses.– At all stages of the proceedings under this Chapter, a person subject to this Chapter is entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist the person. If a person is subjected to an examination under this Chapter, the person may retain a qualified expert of his or her own choosing to perform the examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his or her own choosing, the court shall determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court shall assist the person in obtaining the expert to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source.

"**§ 122F-9. Standard for determining predator status; control, care and treatment of defendant; interagency agreements; release; mistrial procedures.**

(a) Trial: Determine whether defendant committed unlawful act.– When conducting a trial under this Chapter, the court first shall hear evidence and determine whether the defendant committed the act with which he or she is charged. The hearing on this issue shall comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while lacking the capacity to proceed to trial, apply. After hearing evidence on this issue, the court shall make specific findings on whether the defendant committed the act with which he or she is charged; the extent to which the defendant's incompetence or developmental disability affected the outcome of the hearing, including its effect on the defendant's ability to consult with and assist counsel and to testify on the defendant's own behalf; the extent to which the evidence could be reconstructed without the assistance of the defendant; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the defendant committed the act with which he or she is charged, the court shall enter a final order and may proceed to consider whether the defendant should be committed pursuant to this Chapter.

(b) Trial: Determine sexual predator status.– The court or jury shall determine whether, beyond a reasonable doubt, the defendant is a sexual predator. If a jury determines that the defendant is a sexual predator, the determination shall be by unanimous verdict. If the court or jury determines that the defendant is a sexual predator, the defendant shall be committed to the custody of the Department of Health and Human Services for control, care, and treatment until such time as the defendant's mental abnormality has so changed that the defendant is safe to be at large and has been released pursuant to this Chapter.

(c) Control, care, and treatment of defendant.– The control, care, and treatment shall be provided at a facility operated by the Department of Health and Human Services. At all times, a defendant committed for control, care, and treatment by the Department of Health and Human Services pursuant to this Chapter shall be kept in a secure facility, and the defendant shall be segregated at all times from other patients under the supervision of the Department of Health and Human Services. The Department of Health and Human Services may enter into an interagency agreement with the Department of Correction for the control, care, and treatment of these defendants. A defendant who is in the confinement of the Department of Correction pursuant to an interagency agreement authorized by this Chapter shall be kept in a secure facility and shall, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Correction.

(d) Release if jury not convinced beyond a reasonable doubt.– If the court or jury is not satisfied beyond a reasonable doubt that the defendant committed the act with which the defendant was charged the defendant shall be released. If the court or jury is not satisfied beyond a reasonable doubt that the defendant is a sexual predator, the court shall direct the defendant's release.

(e) Mistrial.– Upon a mistrial, the court shall direct that the defendant be held at an appropriate secure facility including, but not limited to, a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within 90 days of the previous trial, unless the subsequent trial is continued.

(f) Right of appeal.– The court or jury's determination that a defendant committed the act with which the defendant is charged may be appealed. The court or jury's determination that a defendant is a sexual predator may be appealed. The defendant shall be committed to the custody of the Department of Health and Human Services pending his or her appeal.

"**§ 122F-10. Periodic mental examination of committed defendants; report; petition for release; hearing; trial to consider release.**

(a) Periodic mental examination.– A defendant committed pursuant to this Chapter shall have an examination of his or her mental condition performed once every year. The defendant may retain or, if the defendant is indigent and so requests, the court may appoint a qualified expert to examine the defendant, and the expert shall have access to all medical, psychological, criminal offense, and disciplinary records and reports concerning the defendant. The annual report shall be provided to the court which committed the defendant pursuant to this Chapter, the Attorney General, and the district attorney in the jurisdiction where the defendant was charged with the sex offense.

(b) Judicial hearing; defendant's right to petition for release.– The court shall conduct an annual hearing to review the status of the committed defendant. The committed defendant is not prohibited from petitioning the court for release at this hearing. The Secretary of Health and Human Services shall provide the committed defendant with an annual written notice of the defendant's right to petition the court for release over the Secretary's objection; the notice shall contain a waiver of rights. The Secretary shall forward the notice and waiver form to the court with the annual report.

The committed defendant has a right to have an attorney represent him or her at the hearing, but the committed defendant is not entitled to be present at the hearing.

(c) Change in mental abnormality.– If the court determines that probable cause exists to believe that the defendant's mental abnormality has so changed that the defendant is safe to be at large and, if released, is not likely to commit a sex offense, the court shall schedule a trial on the issue. At the trial, the committed defendant is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the defendant at the initial commitment proceeding. The Attorney General shall notify the victim and the victim's parent or legal guardian of all proceedings. The Attorney General shall represent the State and has the right to have the committed defendant evaluated by qualified experts chosen by the State. The trial shall be before a jury if requested by the defendant, or the Attorney General.. The committed defendant also has the right to have qualified experts evaluate the defendant on the defendant's behalf, and the court shall appoint an expert if the defendant is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the committed defendant's mental abnormality remains such that the defendant is not safe to be at large and, if released, is likely to engage in sex offenses.

"**§ 122F-11. Petition of release; hearing ordered by court.**

If the Secretary of Health and Human Services determines that the defendant's mental abnormality has so changed that the defendant is safe to be at large and, if released, is not likely to commit a sex offense, the Secretary shall authorize the defendant to petition the court for release. The petition shall be served upon the court and the Attorney General. The Attorney General shall notify the victim and the victim's parent or legal guardian of the proceeding. The court, upon receipt of the petition for release, shall order a hearing within 30 days. The Attorney General shall represent the State and has the right to have the petitioner examined by experts chosen by the State. The hearing shall be before a jury if requested by either the petitioner or the Attorney General. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the petitioner's mental abnormality remains such that the petitioner is not safe to be at large and, that if released, is likely to commit a sex offense.

"**§ 122F-12. Grounds for denial of petition for release.**

Nothing in this Chapter prohibits a defendant from filing a petition for release pursuant to this Chapter. However, if a defendant has previously filed a petition for release without the approval of the Secretary of Health and Human Services, and the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not changed so that the petitioner continued to be a threat and, if released, would commit a sex offense, the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed defendant without the Secretary's approval, the court shall, whenever possible, review the petition and determine if the petition is based upon frivolous grounds and, if so, shall deny the petition without a hearing.

"**§ 122F-13. Restricted release of confidential information and records to agencies and Attorney General.**

In order to protect the public, relevant information and records that otherwise are confidential or privileged shall be released to the facility, institution, or agency with legal custody of a defendant and the Attorney General for the purpose of meeting the notice requirements of G.S. 122F-4 and determining whether a defendant is or continues to be a sexual predator.

"**§ 122F-14. Evidentiary records; court order to open sealed records.**

Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, or victim impact statements that have been submitted to the court or admitted into evidence under this Chapter shall be part of the record, but must be sealed and opened only on order of the court.

"**§ 122F-15. Registration of defendants released from commitment.**

A defendant released from commitment pursuant to this Chapter shall register pursuant to and comply with the requirements of Article 27A of Chapter 14 of the General Statutes.

"**§ 122F-16. Involuntary detention or commitment; constitutional requirements.**

The involuntary detention or commitment of a defendant pursuant to this Chapter shall conform to constitutional requirements for care and treatment.

"**§ 122F-17. Return of defendant for trial upon regaining capacity.**

If a defendant who is committed under this Chapter, gains capacity to proceed to trial, the individual or institution that has custody of the defendant shall notify the clerk in the county in which the criminal proceeding is pending and the defendant shall be returned for trial pursuant to G.S. 15A-1006."

SECTION 10. Part 1 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.6D. Registration requirement for certain persons charged with sex offenses but found incapable of proceeding to trial.**

Pursuant to G.S. 122F-15, a person who is charged with a sex offense as defined in G.S. 122F-2, is found incapable of proceeding to trial, is committed under Chapter 122F of the General Statutes, and is later released from commitment shall register in person just as a defendant convicted of the same offense with which the person is charged must register."

SECTION 11. This act becomes effective September 1, 2008, and applies to any defendant charged with a sex offense as defined by G.S. 122F-2 as enacted by Section 9 of this act and found incapable of proceeding to trial under Article 56 of Chapter 15A of the General Statutes, before, on, or after September 1, 2008, if the defendant has a mental abnormality unless the charge was dismissed under G.S. 15A-1008 before September 1, 2008.

HOUSE BILL 1253: Juvenile Code Revisions

BILL ANALYSIS

Committee:	Senate Judiciary I (Civil)	**Date:**	July 16, 2008
Introduced by:	Reps. Dickson, Jones, Haire	**Summary by:**	Emily Johnson Staff Attorney
Version:	PCS to First Edition H1253-CSLH-48[v1]		

SUMMARY: ***The PCS for HB 1253 adds a new Chapter 122F to the General Statutes. Chapter 122F creates a new civil commitment procedure that is available exclusively for the commitment of a defendant who: (i) is charged with committing a sex offense against a child under the age of 16 years, (ii) is found incompetent to proceed to trial, and (iii) who does not meet the criteria for involuntary commitment but does suffer from a mental abnormality. A mental abnormality is defined as "a mental condition affecting the defendant's emotional or volitional capacity that predisposes the person to commit sex offenses to a degree that makes the person a menace to the health and safety of others. The term also includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long term control, care, and treatment."***

The revised PCS makes the following changes:

- ***Requires that all notices to victims also be given to the victim's parent or legal guardian.***
- ***Provides that both the Attorney General and District Attorney may represent the State in the trial for civil commitment, but that the Attorney General shall refer the case to the appropriate district attorney if venue for the civil commitment trial is the jurisdiction where the defendant was charged with the sex offense.***
- ***Removes the transition provision providing for involuntary commitment until the effective date of the bill.***
- ***Revises the effective date from December 1, 2008 to September 1, 2008.***

CURRENT LAW: Part 7 of Article 5 of Chapter 122C (Mental Health) provides for the involuntary commitment of the mentally ill. Under G.S. 122C-261, individuals alleged to be mentally ill and dangerous to themselves or others may be taken into custody for examination. G.S. 122C-264 requires that if the examining physician or psychologist recommends commitment, the matter shall be calendared for hearing in district court. G.S. 122C-266 states that an individual may be held at a facility pending the hearing, but that individuals charged with a violent crime found incapable of proceeding may not be released until ordered following the district court hearing. G.S. 112C-268 requires the hearing to be held within 10 days of when the individual was taken into custody and provides that the respondent may be represented by counsel or have counsel appointed in accord with rules adopted by the Office of Indigent Defense Services. With the court's consent, counsel may in writing waive the respondent's presence. To support an impatient commitment order, the court must find by clear and convincing evidence that the respondent is mentally ill and dangerous to self or others. G.S. 122C-272 provides that the district court's judgment may be appealed to the Court of Appeals. G.S. 122C-276 provides for rehearings 15 days before the end of the initial inpatient commitment period to determine if commitment beyond the initial period is required.

BILL ANALYSIS: The PCS to HB 1253 provides that when a defendant who is charged with committing a sex offense against a child under the age of 16 years is found incompetent to proceed to trial, the presiding judge must also determine whether there are reasonable grounds to believe that the defendant either meets the criteria to be involuntarily committed under existing law (Part 7 of Article 5 of Chapter 122C) or has a mental abnormality.

Sections 1-8: If the judge finds reasonable grounds to believe that the defendant meets either the involuntary commitment criteria or has a mental abnormality, then the judge must enter a custody order to have the defendant evaluated for both conditions by a physician. The procedure to be followed for the evaluations is the procedure set out in Part 7 of Article 5 of Chapter 122C (Involuntary Commitment of the Mentally Ill). If the physician conducting the examination finds the defendant meets the criteria for involuntary commitment, then the defendant shall be involuntarily committed as provided by current law. (See Part 7 of Article 5 of Chapter 122C.) If the physician finds that the defendant does not meet the criteria for involuntary commitment but does have a mental abnormality, then the physician shall include that finding in the report provided to both the clerk of court and to the court. The court shall

then refer the defendant to the Attorney General and Prosecutor's Review Committee created by the PCS to be reviewed for possible civil commitment under Chapter 122F of the General Statutes. The PCS also makes conforming changes to Part 7 of Article 5 of Chapter 122C.

Section 9: The PCS to HB 1253 would create a new chapter, Chapter 122F (Civil Commitment of Certain Sex Offenders) which establishes a new procedure for the civil commitment of a defendant who lacks the capacity to proceed to trial and who is determined to be a sexual predator.

Key Definitions: A **sexual predator** is defined as a defendant who:

(i) is charged with committing a sex offense against a child under the age of 16 years,

(ii) is found incompetent to proceed to trial, and

(iii) suffers from a mental abnormality that makes the defendant likely to engage in sex offenses against minors if not confined in a secure facility for long-term control, care, and treatment.

A **mental abnormality** is defined as: "a mental condition affecting the defendant's emotional or volitional capacity that predisposes the person to commit sex offenses in a degree that makes the person a menace to the health and safety of others. The term includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long term control, care, and treatment."

Prosecutor's Review Commission: Under Chapter 122F, the Attorney General must appoint a Prosecutor's Review Committee. There is no set number for the Committee membership, but it must include a staff member of the Attorney General, a district attorney, and a victim's representative. The Attorney General or the Attorney General's designee serves as Chair of the Committee.

Referral of Cases: Cases of incompetent defendants who appear to meet the criteria for a sexual predator as defined above are referred to the Committee for review to determine whether probable cause exists to believe that the person is a sexual predator. The cases are referred in two ways:

1) By a court after it determines that a defendant lacks the capacity to stand trial, cannot be involuntarily committed, but may have a mental abnormality, or

2) By a facility, institution, or agency that has custody of an incompetent defendant charged with a sex offense who has been in secure facility but whose release from the facility is pending.

Petition for Probable Cause Review: If the Committee finds that probable cause exists to support the allegation that the defendant is a sexual predator, the Attorney General must petition the court in the jurisdiction where the defendant committed the offense to make a probable cause determination on that issue. Notice must be given to the victim, victim's parent or legal guardian, and the district attorney in the jurisdiction where the defendant was charged.

Probable Cause Determination: Once the petition is filed, the court determines whether probable cause exists. Either the district attorney or Attorney General may present evidence to the court. If probable cause is found, the defendant is taken into custody if not already confined in a secure facility. The defendant has the right to contest the probable cause determination as to whether the defendant is a sexual predator at a separate hearing. If probable cause is found, the defendant is transferred to a secure facility for an evaluation by a qualified expert approved by the court as to whether the defendant is a sexual predator.

Trial: A trial is scheduled in Superior Court within 60 days after the completion of the probable cause hearing if probable cause is found. Both the Attorney General and the District Attorney of the jurisdiction where the defendant committed the offense may represent the State; however, if venue for the trial is the jurisdiction where the defendant was charged, the Attorney General should refer the case to the appropriate District Attorney. A jury trial may be requested by either the defendant or the Attorney General, and if requested shall be granted. Otherwise, the trial is before a judge in the county where the offense was committed. Once the trial date is set, the Attorney General or district attorney must notify the victim and the victim's parent or guardian in a timely manner of the time, date, and location of the trial. The defendant has a right to counsel at the trial and, if indigent, shall have counsel appointed if so requested. If an examination of the defendant is required, the defendant may retain his or her own qualified expert to conduct the examination. If the defendant is indigent and requests his or her own expert the court must determine whether the expert's services are necessary and whether the expert's compensation request is reasonable.

Standard for Determining Predator Status: At the trial the court determines two issues:

(i) whether the defendant committed the act with which the defendant is charged, and if so,

(ii) whether the defendant is a sexual predator.

The standard of proof for both issues is "beyond a reasonable doubt."

Issue 1: Commission of Charged Act - With regard to the first issue, the court must conduct an evidentiary hearing in which the criminal rules of evidence and constitutional rights available to defendants at criminal trials, other than the right not to be tried while lacking the capacity to stand trial, apply. The court must make specific findings on all of the following:

- whether the defendant committed the act with which he or she is charged,
- the extent to which the defendant's incompetence or developmental disability affected the outcome of the hearing,
- the extent to which the evidence could be reconstructed without the assistance of the defendant, and
- the strength of the prosecution's case.

If the court finds beyond a reasonable doubt that the defendant committed the act as charged, then the court must enter a final order on that issue that is appealable by the defendant and proceed to the second issue.

Issue 2: Determination of whether the defendant is a sexual predator. - The trial court or jury must determine beyond a reasonable doubt that the defendant is a sexual predator. A jury determination that the defendant is a sexual predator must be by unanimous verdict. If the court or jury determine the defendant to be a sexual predator, then the defendant is committed to the custody of the Department of Health and Human Services for control, care, and treatment until the time when the defendant's mental abnormality has changed to the extent the defendant is safe to be at large and may be released as provided by Chapter 122F.

Control, Care and Treatment of Defendant: A defendant committed under Chapter 122F must be housed in a secure facility operated by the Department of Health and Human Services and shall be segregated at all times from other patients under the supervision of the Department. However, the Department of Health and Human Services may enter into an interagency agreement with the Department of Correction for the control, care, and treatment of the defendant, in which case the defendant would be housed in a secure facility managed by the Department of Correction. In that situation, the Department of Correction must, to the degree possible, house the defendant separately from other offenders in the custody of the Department of Correction.

Mistrial: In the event of a mistrial, the defendant must be held in an appropriate secure facility, which would include a State or local detention facility, until another trial is conducted. A subsequent trial must be conducted within 90 days of the mistrial unless the subsequent trial is continued.

Right of Appeal: Both the determination of whether the defendant committed the unlawful act with which the defendant is charged and the determination that the defendant is a sexual predator can be appealed by the defendant.

Periodic evaluation: Annually there must be both an examination of the defendant to determine the defendant's mental condition with the results reported to the court, the Attorney General, and the district attorney who prosecuted the defendant, and a court hearing to review the status of the defendant. The defendant may retain an expert for the examination, and if indigent, may have an expert appointed to do the examination. The defendant may petition the court for release at the hearing and has a right to have counsel at the hearing; however, the committed defendant is not entitled to be present at the hearing.

Trial to consider release: If the court determines that probable cause exists to believe that the defendant's mental abnormality has changed so that the defendant is not likely to commit a sex offense if released and therefore safe to be at large, the court shall schedule a trial on the issue. The defendant or Attorney General may request a jury trial. The defendant is entitled to be present at the trial and the Attorney General must represent the State at the trial. The Attorney General must also notify the victim of the proceedings. The same constitutional protections and criminal rules of law as applied at the initial trial for commitment also apply in this trial. The burden of proof is on the State to prove beyond a reasonable doubt that the defendant should not be released.

Petition of release: If the Secretary of Health and Human Services determines that the defendant's mental abnormality has changed so that the defendant is not likely to commit a sex offense if released, and therefore safe to be at large, the Secretary must authorize the defendant to petition the court for release and the petition is served upon the court and the Attorney General. The court must schedule a hearing, which must be a jury hearing if so requested by either the defendant or the Attorney General. The burden of proof is on the Attorney General who must establish beyond a reasonable doubt that the defendant should not be released.

Denial of Petition for Release: If a defendant files a petition without the approval of the Secretary of Health and Human Services, the court shall, if possible review the petition to determine whether it is based on frivolous grounds, and if so, deny the petition without a hearing. If the court determines the petition to be either frivolous or that the petitioner's condition has not changed and so remains a threat if released, then the court shall deny any subsequent petition from a committed defendant unless the petition contains facts regarding the defendant's condition that warrant a hearing.

Release of Confidential Information: G.S. 122F-13 authorizes release of certain confidential and privileged information and records regarding a defendant to the Attorney General and to a facility, institution, or agency with legal custody of a defendant in a secured facility for the purpose of satisfying notice requirements under G.S. 122F-4 and for determining whether a defendant is a sexual predator.

Sealed Evidentiary Records: G.S. 122F-14 provides that the defendant's psychological reports, drug and alcohol reports, treatment records, reports of a diagnostic center, medical records, or victim impact statements submitted to the court or admitted into evidence as part of the record must be sealed and opened only by order of the court.

Sex Offender Registry Required: A defendant who is committed under Chapter 122F and later released from commitment must register as a Sex Offender.

Constitutional Requirements for Involuntary Detention: G.S. 122F-16 requires that the care and treatment of a defendant involuntarily detained or committed under Chapter 122F meet constitutional requirements.

Return for Trial upon Regaining Capacity: G.S. 122F-17 provides that if a defendant committed under Chapter 122F who gains the capacity to proceed to trial, then the court must be so notified and the defendant returned for trial pursuant to G.S. 15A-1006.

EFFECTIVE DATE: Chapter 122F becomes effective September 1, 2008, but applies retroactively to any defendant charged with a sex offense against a child under the age of 16 years, and found incompetent to stand trial before, if the defendant has a mental abnormality unless the charge against the defendant was dismissed prior to September 1, 2008.

BACKGROUND: In Kansas v. Hendricks, 521 U.S. 346 (1997), the United State Supreme Court found that the Kansas Sexually Violent Predator Act, which provided for civil commitment of individuals with mental abnormalities (defined as a cognitive or acquired condition affecting the emotional or volitional capacity which predisposed the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others) satisfied substantive due proves requirements and did not violate the Constitution's double jeopardy prohibition or ban on ex post facto lawmaking as a civil commitment procedure.

H1253e1-SMTC-CSTC

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1253 DATE 7-16-08

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

COMMITTEE SUBSTITUTE H1253-CSLH-49

Rep.)
Sen.) Rand

1 moves to amend the bill on page 10, line 38

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the phrase "who prosecuted the defendant"

4 and by substituting the following:

5 "in the jurisdiction where the defendant was

6 charged with the sex offense."

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SIGNED Tay Rand

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Judiciary I (Civil) July 16, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	RNC
Tom Vitaglione	CFTF
Mandy Ableidinger	Action for Children
Martin Pharr	NC DJJDP
Shannon Hanes	NC DJJDP
Boyd Cauble	City of Charlotte
AJ Ripley	NC Justice Ctr
Jim Blackburn	NC Association of County Commissioners
Cameron Healey	Electric Cities of NC, Inc.
Ladia Brown	Speaker's Office
John Phelps	NCLM

VISITOR REGISTRATION SHEET

Judiciary I (Civil) — July 16, 2008

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Jennifer Mahan	MHA NC
John Mele	Coalition
Patrick Buffkin	NMRSS
Debra DeCamillis	DOC
Lexie Revorcd	NCCF
Aana Wherry	NCCN
Rick Zechini	NC Assoc. of Realtors
Michelle Frazier	NAMFS
Chris Fitzsimon	NC Policy Watch
John Rust	NCFPC

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Judiciary I (Civil) July 16, 2008

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Brittany Farrell	NCFPC