2013-2014

SENATE
JUDICIARY II

MINUTES

MEMBERSHIP LIST
SENATE JUDICIARY II COMMITTEE
2013-2014

Senator Austin Allran, Cochair Room 625, LOB 733-5876 Austin.Allran@ncleg.net LA: Carole Walker	Senator Warren Daniel, Cochair Room 1127, LB 715-7823 Warren.Daniel@ncleg.net LA: Andy Perrigo
Senator Shirley Randleman, Vice Chair Room 308, LOB 733-5743 Shirley.Randleman@ncleg.net LA: Jeb Kelly	Senator Stan Bingham Room 2117, LB 733-5665 Stan.Bingham@ncleg.net LA: Judy Chriscoe, Maria Kinnaird
Senator Angela Bryant Room 520, LOB 733-2878 Angela.Bryant@ncleg.net LA: Karon Hardy	Senator Ben Clark Room 1121, LB 733-9349 Ben.Clark@ncleg.net LA: Loleta Wilkerson
Senator Bill Cook Room 525, LOB 715-8293 Bill.Cook@ncleg.net LA: Amanda Shreve	Senator Jim Davis Room 2111, LB 733-5875 Jim.Davis@ncleg.net LA: Kaye Culberson
Senator Malcolm Graham Room 622, LOB 733-5650 Malcolm.Graham@ncleg.net LA: Amber Harris	Senator Fletcher Hartsell, Jr. Room 300-C, LOB 733-7223 Fletcher.Hartsell@ncleg.net LA: Gerry Johnson
Senator Eleanor G. Kinnaird Room 628, LOB 733-5804 Ellie.Kinnard@ncleg.net LA: Kathie Young	Senator Floyd McKissick, Jr. Room 516, LOB 733-4599 Floyd.McKissick@ncleg.net LA: Rosita Littlejohn
Senator Tommy Tucker Room 311, LOB 733-7659 Tommy.Tucker@ncleg.net LA: Joseph Stansbury	
Staff: Ms. Brenda Carter Research Division 733-2578 Brenda.Carter@ncleg.net	 Mr. Hal Pell Research Division 733-2578 Hal.Pell@ncleg.net
DeAnne Mangum, Committee Assistant Room 300-B, LOB 733-2405 DeAnne.Mangum@ncleg.net	

Senate Committee on Judiciary II
Tuesday, February 12, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 50	Discharged Veterans/Identity Theft Protection.	Senator Bingham
SB 16	Revoke License for Passing Stopped School Bus.	Senator Bingham

Adjournment

Senate Judiciary II Committee
Tuesday, February 12, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, February 12, 2013 in room 1027 of the Legislative Building. Razi Lane of Tyner, Hannah Nazzaro and Josiah Nazzaro of Oak Island served as pages. Senator Allran presided as chair.

S.B. 50 – Discharged Veterans/Identity Theft Protection

Senator Bingham was recognized to explain the bill and Senator Cook moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would increase the period of time from 50 to 80 years during which access to filed military discharge documents is restricted. The law applies to documents filed after or on January 1, 2004. Chip Killian, representing Registers of Deeds, was recognized to speak in favor of the bill. Hal Pell, an attorney with the Research Division, was recognized to answer questions. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 16 – Revoke License for Passing Stopped School Bus

Senator Bingham explained the bill. It would require revocation of the drivers license of any person convicted of the offense of passing a stopped school bus. The period of revocation for a misdemeanor offense would be six months. When the offense is a felony and a person is struck the revocation period would be two year; if a person is struck and killed the revocation period would be three years. Senator Tucker stressed public education on the consequences of passing a stopped bus. Tom Vitaglione, Action for Children, was recognized to speak in favor of the bill. Senator Allran created a subcommittee to review the bill, appointing Senator Daniel, Senator Bingham, Senator McKissick, Senator Tucker, Senator Bryant and Senator Randleman. A copy of the bill, the summary, and a violations chart is attached.

The meeting adjourned at 10:41 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	February 12, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 16	Revoke License for Passing Stopped School Bus.	Senator Bingham
SB 50	Discharged Veterans/Identity Theft Protection.	Senator Bingham

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, February 12, 2013

Senator Allran,
submits the following with recommendations as to passage:

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

SB **50** Discharged Veterans/Identity Theft Protection.

Draft Number:	S50-PCS75040-RK-1
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 50
PROPOSED COMMITTEE SUBSTITUTE S50-CSRK-1 [v.4]

2/11/2013 2:41:16 PM

Short Title: Discharged Veterans/Identity Theft Protection. (Public)

Sponsors:

Referred to:

February 6, 2013

A BILL TO BE ENTITLED

AN ACT TO PREVENT IDENTITY THEFT OF DISCHARGED VETERANS BY RESTRICTING THE RELEASE OF MILITARY SERVICE DISCHARGE DOCUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47-113.2 reads as rewritten:

"**§ 47-113.2. Restricting access to military discharge documents.**

(a) All military discharge documents filed on or after January 1, 2004, shall be considered a public record, but for confidential safekeeping and restricted access to such documents, these documents will be filed with the registers of deeds in this State. These documents are exempt from public inspection and access except as allowed in ~~subsection (b)~~subsections (b) and (m) of this section.

. . .

(e) No copy of a military discharge document or any other information from such document filed after ~~the effective date of this section~~ January 1, 2004, shall be made available other than in accordance with subsection (b) or (m) of this section.

. . .

(l) The register of deeds shall, to the greatest extent possible, take appropriate protective actions in accordance with any limitations determined necessary by the register of deeds with regard to records that were filed before ~~the effective date of this section.~~January 1, 2004.

(m) Subsection (e) of this section shall not apply to images of military discharge documents that have been on file for over ~~50 years.~~80 years.

. . .

(q) The words "register of deeds" appearing in this section shall be interpreted to mean "register of deeds, assistant register of deeds, or deputy register of ~~deeds".~~deeds.""

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

SENATE BILL 50:
Discharged Veterans/Identity Theft Protection

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 11, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S50-CSRK-1		Committee Counsel

SUMMARY: ***This act would increase the period of time from 50 to 80 years during which access to filed military discharge documents is restricted. The law applies to documents filed after on or after January 1, 2004. The act is effective when it becomes law.***

CURRENT LAW:

- Effective January 1, 2004, persons filing military discharge documents with a Register of Deeds fill out a form provided by that office. The discharge documents are filed separately from other documents filed with the Register of Deeds, and disclosure of these documents is limited to those persons designated by statute. Fifty years from the date of filing, the restrictions on disclosure are no longer in effect.
- The law provides that to the greatest extent possible, Registers of Deeds are to take appropriate protective actions determined necessary with regard to records that were filed before January 1, 2004.

BILL ANALYSIS: The act would increase the period of limited disclosure from 50 to 80 years. The proposed committee substitute makes technical corrections to the current law.

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

O. Walker Reagan
Director

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 16

Short Title:	Revoke License for Passing Stopped School Bus.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); and Jenkins.	
Referred to:	Judiciary II.	

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL REVOKE A PERSON'S DRIVERS LICENSE FOR PASSING A STOPPED SCHOOL BUS IN VIOLATION OF G.S. 20-217.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217 is amended by adding a new subsection to read:

"**§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.**

...

(g1) The Division shall revoke, for a period of six months, the drivers license of any person convicted of a misdemeanor under this section. The Division shall revoke, for a period of two years, the drivers license of any person convicted of a Class I felony under this section. The Division shall revoke, for a period of three years, the drivers license of any person convicted of a Class H felony under this section. In the case of a first felony conviction under this section, the licensee may apply to the sentencing court for a limited driving privilege after a period of 12 months of revocation, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation remaining in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked or suspended under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

...."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 16:
Revoke License for Passing Stopped School Bus

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 11, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 16 would require revocation of the drivers license of any person convicted of the offense of passing a stopped school bus. The period of revocation for a misdemeanor offense would be six months. When the offense is a felony and a person is struck the revocation period would be two years; if a person is struck and killed the revocation period would be three years.***

CURRENT LAW: G.S. 20-217 makes it unlawful for a driver to pass or attempt to pass a school bus displaying its mechanical stop sign or flashing red lights and stopped for the purpose of receiving or discharging passengers. Violation is a Class 1 misdemeanor, except:

- A driver who commits the violation and strikes any person is guilty of a Class I felony.
- A driver who commits the violation and strikes any person, resulting in the death of that person, is guilty of a Class H felony.

BILL ANALYSIS: Senate Bill 16 would require the Division of Motor Vehicles (DMV) to revoke the drivers license of any person convicted of passing a stopped school bus in violation of the law, in accordance with the following:

- For a period of six months, if the offense is a misdemeanor.
- For a period of two years, if the offense is a Class I felony (a person is hit by the driver).
- For a period of three years, if the offense is a Class H felony (a person dies as the result of being hit by the driver).

In the case of a first felony conviction of passing a stopped school bus, the driver may apply for a limited driving privilege after 12 months of revocation provided the person's license has not otherwise been revoked or suspended. The limited driving privilege may be allowed for the remainder of the revocation period for purposes reasonably connected with the health, education, and welfare of the person convicted and his/her family, and would be issued in the same manner and under the same terms and conditions applicable to persons convicted of excessive speeding. If the person's license is revoked or suspended for any other reason, the limited driving privilege would be invalidated.

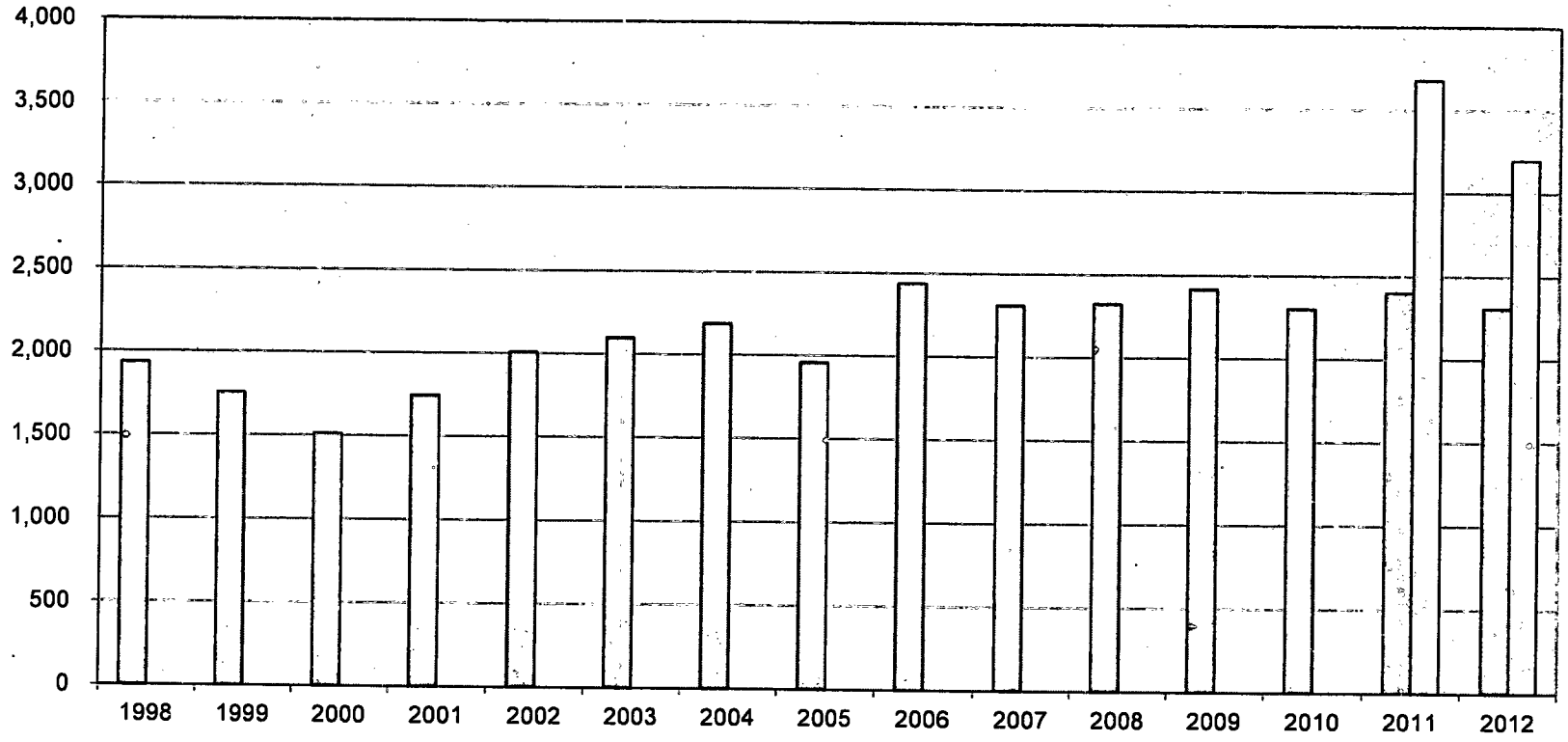
EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

O. Walker Reagan
Director

Research Division
(919) 733-2578

ONE DAY School Bus Stoparm Violation Counts
State of North Carolina

Results of Annual One-Day INCIDENTS Reported by School Bus Drivers
***Beginning with 2011 also includes # VEHICLES that passed (in blue)**



DPI Transportation Services
(919) 807-3570

7/11/12

PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124 LB

DATE: 2-12 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Rai Lane	Tyner, NC	Sen. Jenkins
2 Hannah Nazzaro	Oak Island	Sen. Raben
3 Josiah Nazzaro	Oak Island	Sen. Raben
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

Committee Sergeants at Arms

NAME OF COMMITTEE Senate Judiciary II

DATE: 2/12/13 **Room:** 1124

House Sgt-At Arms:

1. **Name:** _____
2. **Name:** _____
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Robert Young
2. **Name:** Charles Harper
3. **Name:** Billy Fritscher
4. **Name:** _____
5. **Name:** _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 12, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom Vitaglia	ACTION FOR CHILDREN
Paul O'Connor	UNC-CH (JOMC)
Chip Killian	Nelson Mullins
Rhonda Todd	DOA
Christy Agner	D. of Justice
Derek Graham	DPI
Jared Bagot	NC Chiefs of Police
Patrick Lines	Senator Randleman's office
Kay Emanuel	School of Government
Kim Couch	NCBA
Sarah Wolfe	MWC LLC

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 12, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robert Childs	NC Harm Reduction Coalition
Alex Miller	KLG
[signature]	NCRMA
David McGowan	NCAR
Andrew Cagle	NC Sheriffs' Assn.
Tessie Castillo	NC Harm Reduction Coalition
ZEB ALLEY	NMRS
[signature]	SOS
Leilani Attilio	NC HRC

Senate Committee on Judiciary II
Thursday, February 14, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 54	Time for Recording Foreclosure Notice.	Senator Graham
SB 28	Gun Permit Information/No Publication.	Senator Bingham

Adjournment

Senate Judiciary II Committee
Thursday, February 14, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, February 14, 2013 in room 1027 of the Legislative Building. Razi Lane of Tyner, Hannah Nazzaro and Josiah Nazzaro of Oak Island served as pages. Senator Allran presided as chair.

S.B. 54 – Time for Recording Foreclosure Notice

Senator Graham was recognized to explain the bill, which would require the recording of a notice of foreclosure in the office of the register of deeds within 60 days of the filing of a final report of the sale of real property pursuant to a power of sale, or pursuant to a judicial sale by a commissioner or trustee in a deed of trust. Brenda Carter, an attorney with the Research Division, was recognized to answer questions. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 28 – Gun Permit Information/No Publication

Senator Bingham explained the bill. It would provide that pistol purchase permits, concealed carry permits, and pistol sales records are confidential, and may only be made available upon require of State and local law enforcement agencies, or by a court pursuant to a subpoena or order. Senator Bingham offered two technical amendments and asked Hal Pell, an attorney with the Research Division, to explain them. Mr. Pell explained that the first amendment was technical and Senator Bingham moved for its adoption. The motion carried. Mr. Pell explained the second amendment: there is confusing language in the General Statutes; the amendment clarifies language regarding gun dealers' sales/permitting records. Senator Bingham stressed that the bill is aimed at preventing firearms from being stolen by keeping ownership out of public domain. He moved for the adoption of the second amendment and the motion carried. Greg Stahl, representing the NC Sheriff's Association, was recognized to speak in favor of the bill. John Bussian, representing the NC Press Association, spoke in opposition and to answer questions. Henri McClees, representing the NC Firearms Dealers Group, was recognized to speak in favor of the bill. Mike Mann, representing the NC Rifle and Pistol Association, spoke in favor of the bill and explained that rifles and shotguns do not require an ownership permit. Senator Bingham provided an article about stolen guns. Senator Daniel moved to roll the amendment into the bill creating a proposed committee substitute and bring it back to the committee for future discussion. A copy of the bill, the summary, the amendments and the article is attached.

The meeting adjourned at 10:58 a.m.

Austin Allran

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, February 19, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

SB **54** Time for Recording Foreclosure Notice.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Malcolm Graham will handle SB 54

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 54

Short Title:	Time for Recording Foreclosure Notice.	(Public)
Sponsors:	Senator Graham (Primary Sponsor).	
Referred to:	Judiciary II.	

February 6, 2013

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT IN CASE OF FORECLOSURE OF A DEED OF TRUST OR MORTGAGE THE COMMISSIONER OR TRUSTEE AUTHORIZED TO SELL THE PROPERTY SHALL RECORD A NOTICE OF FORECLOSURE IN THE OFFICE OF THE REGISTER OF DEEDS WITHIN SIXTY DAYS AFTER FILING THE FINAL REPORT ON THE SALE OF THE PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-339.31 reads as rewritten:

"**§ 1-339.31. Public sale; report of commissioner or trustee in deed of ~~trust.~~trust; recording of foreclosure.**

(a) A commissioner or a trustee in a deed of trust, authorized pursuant to G.S. 1-339.4 to hold a public sale of property, shall, in addition to all other reports required by this Article, file with the clerk of the superior court an account of his receipts and disbursements as follows:

(1) When the sale is for cash, a final report shall be filed within thirty days after receipt of the proceeds of the sale;

(2) When the sale is wholly or partly on time and the commissioner or trustee is not required to collect deferred payments, a final report shall be filed within thirty days after receipt of the cash payment, if any is required, and the receipt of all securities for the purchase price;

(3) When the commissioner or trustee is required to collect deferred payments,

a. He shall file a preliminary report within thirty days after receipt of the cash payment, if any is required, and the receipt of all securities for the purchase price, and

b. If the period of time during which he is required to collect deferred payments extends over more than one year, he shall file an annual report of his receipts and disbursements, and

c. After collecting all deferred payments, he shall file a final report.

(b) The clerk shall audit and record the reports and accounts required to be filed pursuant to this section.

(c) In case of foreclosure of any deed of trust or mortgage, the commissioner or trustee shall, within 60 days after filing the report required by subsection (a) of this section, record in the office of the register of deeds in the county in which the property is situated a notice of foreclosure that complies with the provisions of G.S. 45-38."

SECTION 2. G.S. 1-339.40 reads as rewritten:

"**§ 1-339.40. Private sale; final ~~report.~~report; recording of foreclosure.**

(a) A commissioner or a trustee in a deed of trust authorized pursuant to G.S. 1-339.4 to hold a private sale of property shall make such a final report as is specified in G.S. 1-339.31.

(a1) In case of foreclosure of any deed of trust or mortgage, the commissioner or trustee shall, within 60 days after filing the report required by G.S. 1-339.31(a), record in the office of the register of deeds in the county in which the property is situated a notice of foreclosure that complies with the provisions of G.S. 45-38.

(b) Any other person authorized pursuant to G.S. 1-339.4 to hold a private sale of property shall make such a final report as is specified in G.S. 1-339.32."

SECTION 2. G.S. 45-38 reads as rewritten:

"**§ 45-38. Recording of foreclosure.**

In case of foreclosure of any deed of ~~trust,~~trust or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney ~~shall~~ shall, within 60 days after filing the final report required by G.S. 45-21.33, record a notice of foreclosure that includes the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of the original parties to the original instrument foreclosed, and the recording data for the instrument foreclosed. A notice of foreclosure shall be indexed by the register of deeds in accordance with G.S. 161-14.1."

SECTION 3. This act becomes effective October 1, 2013, and applies to any foreclosure of a deed of trust or mortgage that occurs on or after that date.

SENATE BILL 54:
Time for Recording Foreclosure Notice

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 13, 2013
Introduced by:	Sen. Graham	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill would require the recording of a notice of foreclosure in the office of register of deeds within 60 days of the filing of a final report of the sale of real property pursuant to a power of sale, or pursuant to a judicial sale by a commissioner or trustee in a deed of trust.***

CURRENT LAW: G.S. 45-38 requires the recording of a notice of foreclosure in case of foreclosure of any deed of trust or mortgage. The notice of foreclosure must include the date when, and the person to whom a conveyance was made by reason of the foreclosure.

Provisions pertaining to the judicial sale of property are set out in Article 29A of Chapter 1 of the General Statutes. A judicial sale is a sale of property made pursuant to an order of a judge or clerk in an action or proceeding in the superior or district court. The court has authority in its discretion to determine whether a sale of either real or personal property shall be a public or private sale. An order of sale may authorize designated persons to hold the sale, including a commissioner specially appointed for that purpose. In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust may be authorized to hold the sale. G.S. 1-339.31 requires that a commissioner or trustee in a deed of trust authorized to hold a public sale of property file an account of receipts and disbursements; G.S. 1-339.40 makes that accounting requirement applicable to commissioners or trustees authorized to hold a private sale. The reports must be filed within 30 days after receipt of the proceeds. In the case of deferred payments, annual reports are required; a final report is due after all payments are collected.

Provisions pertaining to the sale of property pursuant to an express power of sale contained in a mortgage, deed of trust, or a power of sale are set out in Article 2A of Chapter 45 of the General Statutes. G.S. 21.33 requires a person who holds a sale of real property pursuant to a power of sale to file a final report and account of receipts and disbursements within 30 days after receipt of the proceeds of the sale.

BILL ANALYSIS: Senate Bill 54 would amend the law pertaining to judicial sales of property and the reports that must be filed by commissioners and trustees in a deed of trust who are authorized by the court to hold a sale of property. In case of foreclosure of any deed of trust or mortgage, the bill would require the filing of the notice of foreclosure within 60 days after the account of receipts and disbursements is filed with the clerk of superior court. The notice of foreclosure must be filed with the office of the register of deeds in the county in which the property is located, and must include the date when, and the person to whom, a conveyance was made by reason of the foreclosure. The 60-day time limitation for filing the foreclosure notice would also apply to persons who are required to file a report and accounting of proceeds from the sale of real property pursuant to a power of sale.

EFFECTIVE DATE: The act would become effective October 1, 2013, and apply to any foreclosure of a deed of trust or mortgage that occurs on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 28

Short Title:	Gun Permit Information/No Publication.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); Apodaca, Barefoot, Brock, Cook, Daniel, J. Davis, Harrington, Hise, Jackson, Jenkins, Newton, Rabin, Randleman, Sanderson, and Wade.	
Referred to:	Judiciary II.	

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION REGARDING CONCEALED HANDGUN PERMITS AND PISTOL PURCHASE PERMITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain ~~and make available to law enforcement agencies a~~ list of ~~permittees.~~permittees; confidentiality of list and permit application information; availability to law enforcement agencies.**

(a) The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and the drivers license identification number used in applying for the permit.

(b) The sheriff shall maintain a listing, including the identifying information, of those persons who are issued a permit. ~~The permit information shall be available upon request to all State and local law enforcement agencies.~~ Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. ~~The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.~~

(c) Except as provided otherwise by this subsection, the list of permit holders and the information collected by the sheriff to process an application for a permit are confidential and are not a public record under G.S. 132-1. The sheriff shall make the list of permit holders and the permit information available upon request to all State and local law enforcement agencies. The State Bureau of Investigation shall make the list of permit holders and the information collected by the sheriff to process an application for a permit available to law enforcement officers on a statewide system. The sheriff and the State Bureau of Investigation shall also make the list of permit holders and information collected to process the permits available to the court or other appropriate party if the list and information are required to be released pursuant to a subpoena or court order."

SECTION 2. G.S. 14-405 reads as rewritten:

"**§ 14-405. Record of permits kept by ~~sheriff.~~ sheriff; confidentiality of permit information.**

(a) The sheriff shall keep a book, to be provided by the board of commissioners of each county, in which he shall keep a record of all licenses or permits issued under this article,

including the name, date, place of residence, age, former place of residence, etc., of each such person, firm, or corporation to whom or which a license or permit is issued.

(b) The records maintained by the sheriff pursuant to this section are confidential and are not a public record under G.S. 132-1; provided, however, that the sheriff shall make the records available upon request to all State and local law enforcement agencies and shall also make the records available to the court or other appropriate party if the records are required to be released pursuant to a subpoena or court order."

SECTION 3. G.S. 14-406 reads as rewritten:

"**§ 14-406. Dealer to keep record of ~~sales.~~ sales; confidentiality of records.**

(a) Every dealer in pistols and other weapons mentioned in this Article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are ~~made, which record shall be open to the inspection of any duly constituted State, county or police officer, within this State.~~made. The records maintained by a dealer pursuant to this section are confidential and are not a public record under G.S. 132-1; provided, however, that the dealer shall make the records available upon request to all State and local law enforcement agencies and shall also make the records available to the court or other appropriate party if the records are required to be released pursuant to a subpoena or court order.

(b) Repealed by Session Laws 2011-56, s. 3, effective April 28, 2011."

SECTION 4. This act becomes effective December 1, 2013.

SENATE BILL 28:
Gun Permit Information/No Publication

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 13, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act provides that pistol purchase permits, concealed carry permits, and pistol sales records are confidential, and may only be made available upon request of State and local law enforcement agencies, or by a court pursuant to a subpoena or order. This act becomes effective December 1, 2013.***

CURRENT LAW:

- The sheriff is required to keep a listing, including the identifying information, for persons who are issued a concealed carry permit or a pistol purchase permit.
- A record is kept by the Sheriff of the identifying information of those issued pistol purchase permits and the record is provided to the Board of Commissioners in each county. There is no exemption from the Public Records Act for the information.
- The identifying information for those persons issued concealed carry permits is kept by the Sheriff, and is sent to the SBI. The information is available to law enforcement officers; the statute does not specify that the information is exempt from the Public Records Act.
- Dealers are required to keep records of sales of pistols, which are open to inspection by any State or local law enforcement officer.

BILL ANALYSIS: This bill provides for law enforcement access to permit and sales information, but adds provisions that make the identifying information of permit holders and purchasers confidential, and exempts the information from the Public Records Act.

EFFECTIVE DATE: This act becomes effective December 1, 2013.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 28

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S28-ARK-2 [v.1]

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

Date 2/14/13 ,2013

Senator Bingham,

moves to amend the bill on page 1 line 29, by rewriting the line to read:

"to a court order.",

And on page 2, line 7, by rewriting the line to read:

"be released pursuant to a court order.",

And on page 2, line 18, by rewriting the line to read:

"released pursuant to a court order.".

SIGNED Stan Bingham
Amendment Sponsor

SIGNED Allran
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 28

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S28-ARK-3 [v.1]

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

Date 2/14/13 ,2013

Senator Bingham,

moves to amend the bill on page 2, lines 14 and 15, by rewriting the lines to read:

"~~State~~made. The records maintained by a dealer pursuant to this section are confidential; provided, however, that the dealer shall make the records".

SIGNED Stan Bingham
Amendment Sponsor

SIGNED Allran
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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States with high crime see more guns stolen

By Toni Locy, USA TODAY

WASHINGTON — Guns are more likely to be stolen in states with high crime rates, large numbers of gun owners and where laws are lacking on safe storage of firearms, according to a study released Wednesday.

The report by the Americans for Gun Safety Foundation says nearly 1.7 million firearms were reported to police as stolen from January 1993 through August 2002. The number of guns stolen per year has declined, from 221,322 reported in 1993 to 138,035 in 2001, the report says.

The study says the decline in gun thefts coincides with a simultaneous drop in crime in the USA and an increase in use of gun locks and storage devices.

The group, which advocates stronger gun-storage laws, relied on numbers collected by the FBI. The numbers show that nearly 688,000 stolen firearms were recovered during the 10-year period, leaving more than 1 million missing and most likely fueling the black market for criminals.

Nearly 10% of state prison inmates incarcerated on gun crimes say the weapons they used were stolen.

"A stolen gun is like gold to a criminal because it can be quickly resold without fear of it being traced," says Jim Kessler, the foundation's policy and research director.

Six states — Alaska, Alabama, Mississippi, Arkansas, New Mexico and Georgia — had firearm theft rates at least twice the national average, which is 16.8 stolen guns per 1,000 households, the report says.

"For the most part," the report says, "these states share three common traits: a large percentage of gun owners, relatively high crime rates and no laws requiring safe storage of firearms in the home."

California, Texas, Florida, Georgia and North Carolina had the highest number of gun thefts over the past 10 years. But those states drop out of the top five when population is taken into account.

The report also says that the 18 states that have safe storage laws had 26.3% lower than average firearms thefts.

Of those states, four — Nevada, North Carolina, Texas and Florida — ranked in the

top half of states measured by thefts per 1,000 households.

"The (National Rifle Association) has advocated for 131 years the significance of safe storage," says Andrew Arulanandam, a spokesman for the NRA.

"This (report) is yet another example of a gun control group struggling to find political relevance," he says.

Among the report's findings:

- It is 23 times more likely that a firearm will be stolen than used by a child to commit suicide or cause accidental injury or death.
- More than 80% of firearm thefts are from homes or cars.
- Federal prosecutors rarely bring charges for possession or sale of stolen guns. In 1999 and 2000, they prosecuted 708 stolen-gun cases. In those years, more than 286,000 guns were reported stolen. Under federal law, stolen-gun crimes carry up to 10 years in prison.

Experts estimate that there are up to 250 million guns in the USA. About 40% of households report having a firearm in the home.

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VISITOR REGISTRATION SHEET

Senate JII Committee — February 14, 2013

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J RUSSIAN	NC PRESS ASSN
[illegible]	[illegible]
Susan Naggard	ALS
Philip Naggard	ALS
C O'Donnell	The Insider
Jordan Smith	NCLM
Megan Cassella	UNC Chapel Hill
Henri McClees	McClees Consulting
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Senate JII Committee — February 14, 2013

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[signature]	NCRMA
Todd Barlow	NC Advocates for Justice
Joanne Field	NASW-NC
Lauren Absher	NASW-NC
Kay Parsons	NASW-NC
Colleen Kochanek	Kocharek Law Group
Alex Miller	KLG
Jed Baggett	Chiefs of Police
D Allen	NC Rifle & Pistol Assoc
Mike Adams	NCPA

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 14, 2013
Date

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Jenny Jones	Jordan Price
Preston Howard	NCMA

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Senate JII Committee
Name of Committee

February 14, 2013
Date

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M Pruitt	BP
Chris Baggett	NCONG
CHRIS DEVON	NCHBA
Lisa Martin	NC Home Builders
Mildred Spearman	NCAOC

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Senate JII Committee
Name of Committee

February 14, 2013
Date

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Gregg Stahl	NC Sheriffs' Assoc
Andrew Cagle	NC Sheriffs' Assn.
Max Isaacson	NCGA
Misty Greene	NC GA
Jay Peters	CSS
David McGowan	NCAR
Steven Webb	NCHBA
Cody Thomas	NCAR
Will Parry-Hill	NCHFA
Kay Emanuel	School of Government

PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 2-14 TIME: 10 am

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Page Name	Hometown	Sponsoring Senator
1 Pazi Lane	EDENTON, NC	SEN. JENKINS
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NAME OF COMMITTEE Judiciary II

DATE: 2/14/13 **Room:** 1124

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2. **Name:**
3. **Name:**
1. **Name:**
5. **Name:**

Senate Sgt-At Arms:

1. **Name:** Robert Young
2. **Name:** Canton Lewis
3. **Name:** Billy Fritscher
4. **Name:** Steve Wilson
5. **Name:** Ken Kirby

Senate Committee on Judiciary II
Thursday, February 21, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 16	Revoke License for Passing Stopped School Bus.	Senator Bingham

Adjournment

Senate Judiciary II Committee
Thursday, February 21, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, February 21, 2013 in room 1124 of the Legislative Building. Madison Hall of Morganton Daniella Salavay of Raleigh and Elissa Tew of Erwin served as pages. Senator Daniel presided as chair.

S.B. 16 – Revoke License for Passing Stopped School Bus

Senator Bingham was recognized to explain the subcommittee's findings and Senator Tucker moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. Brenda Carter, an Attorney with the Research Division, explained the changes in sentencing and revocation of the licenses. It would require revocation of the drivers license of any person convicted of passing a stopped school bus. The period of revocation for a misdemeanor offense would be 30 days upon a first conviction, and 90 days upon a 2nd or subsequent conviction. If the driver committing the offense strikes a person (Class I felony) the revocation period would be one year; if the drive strikes a person and the person dies as a result (Class H felony) the revocation period would be two years. A person whose license is revoked for passing a stopped school bus would be eligible to apply for a limited driving privilege. Senator Allran moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 10:13 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

Corrected #1: S33 - Use of Criminal History Records by Lic. Bds. has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	February 21, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 16	Revoke License for Passing Stopped School Bus.	Senator Bingham

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	February 21, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 16	Revoke License for Passing Stopped School Bus.	Senator Bingham
SB 33	Use of Criminal History Records by Lic. Bds.	Senator Hartsell

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, February 25, 2013

Senator Daniel,
submits the following with recommendations as to passage:

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

SB **16** Revoke License for Passing Stopped School Bus.

Draft Number:	S16-PCS75067-RV-1
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Stan Bingham will handle SB 16

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 16
PROPOSED COMMITTEE SUBSTITUTE S16-CSRV-1 [v.3]
2/20/2013 3:14:55 PM

Short Title: Revoke License for Passing Stopped School Bus. (Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL REVOKE A PERSON'S DRIVERS LICENSE FOR PASSING A STOPPED SCHOOL BUS IN VIOLATION OF G.S. 20-217.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217 is amended by adding a new subsection to read:

"**§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.**

...

(g1) The Division shall revoke the drivers license of any person convicted of an offense under subsection (a) of this section. Upon a first conviction of a misdemeanor under subsection (a) of this section, the revocation period shall be 30 days. Upon a second or subsequent conviction of a misdemeanor under subsection (a) of this section, the revocation period shall be 90 days. The Division shall revoke, for a period of one year, the drivers license of any person convicted of a Class I felony under this section. The Division shall revoke, for a period of two years, the drivers license of any person convicted of a Class H felony under this section. In the case of any conviction under this section, the licensee may apply to the sentencing court for a limited driving privilege, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation in the same manner and under the same terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked or suspended under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

...."

SECTION 2. G.S. 20-217(e) reads as rewritten:

"(e) Except as provided in subsection (g) of this section, any person violating this section shall be guilty of a Class 1 misdemeanor. A person who violates subsection (a) of this section shall not receive a prayer for judgment continued under any circumstances. A person who violates subsection (a) of this section, and has a prior conviction within the preceding 12 months for violating subsection (a) of this section, shall not be eligible to enter a plea of guilty or no contest to a lesser included offense or to a substitute charge that carries a lesser punishment."

SECTION 3. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 16:
Revoke License for Passing Stopped School Bus

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 20, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S16-CSRV-1		

SUMMARY: ***This proposed committee substitute for Senate Bill 16 would require revocation of the drivers license of any person convicted of passing a stopped school bus in violation of G.S. 20-217. The period of revocation for a misdemeanor offense would be 30 days upon a first conviction, and 90 days upon a 2nd or subsequent conviction. If the driver committing the offense strikes a person (Class I felony) the revocation period would be one year; if the driver strikes a person and the person dies as a result (Class H felony) the revocation period would be two years. A person whose license is revoked for passing a stopped school bus would be eligible to apply for a limited driving privilege.***

CURRENT LAW: G.S. 20-217 makes it unlawful for a driver to pass or attempt to pass a school bus displaying its mechanical stop sign or flashing red lights and stopped for the purpose of receiving or discharging passengers. Violation is a Class 1 misdemeanor, except:

- A driver who commits the violation and strikes any person is guilty of a Class I felony.
- A driver who commits the violation and strikes any person, resulting in the death of that person, is guilty of a Class H felony.

Pursuant to G.S. 20-16, a driver convicted of passing a stopped school bus is assigned five drivers license points for the violation; a person who commits the violation while operating a commercial motor vehicle is assigned eight points for the violation. The Division of Motor Vehicles (DMV) has the authority to suspend the license of any driver who accumulates 12 or more points within a three-year period, or eight or more points in the three-year period immediately following reinstatement of a license that has been suspended or revoked because of a conviction for a traffic offense.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 16 would require DMV to revoke the drivers license of any person convicted of passing a stopped school bus in violation of the law, in accordance with the following:

- For a period of 30 days, if the offense is a misdemeanor and it is the person's first conviction for passing a stopped school bus.
- For a period of 90 days, if the offense is a misdemeanor and it is the person's second or subsequent conviction for passing a stopped school bus.
- For a period of one year, if the offense is a Class I felony (a person is hit by the driver).
- For a period of two years, if the offense is a Class H felony (a person is hit by the driver and dies as a result).

In the case of any conviction of passing a stopped school bus, the driver may apply to the sentencing court for a limited driving privilege provided the person's license has not otherwise been revoked or suspended. The limited driving privilege may be allowed for the remainder of the revocation period for

purposes reasonably connected with the health, education, and welfare of the person convicted and his/her family, and would be issued in the same manner and under the same terms and conditions applicable to persons convicted of excessive speeding. If the person's license is revoked or suspended for any other reason, the limited driving privilege would be invalidated.

Section 2 of the bill would make a person who commits the offense of passing a stopped school bus within one year after a prior conviction of that offense ineligible to enter a plea of guilty or no contest to a substitute charge carrying a lower penalty.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 2-21 TIME: 10 AM

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VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 21, 2013
Date

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Jackson Cecret	NSS
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Senate JII Committee
Name of Committee

February 21, 2013
Date

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Ben Matthews	NCDPI
[illegible]	[illegible]
Katherine Joyce	NCASA
Peg Dorer	Conf. of DAs
Joe McEachern	McEachern Consulting

Senate Judiciary II Committee
Tuesday, February 26, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, February 26, 2013 in room 1027 of the Legislative Building. Austin Jones and Emily Edwards of Clinton served as pages. Senator Allran presided as chair.

S.B. 91 – Prohibit Expunction Inquiry

Senator Daniel was recognized to explain the bill and Senator Randleman moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would prohibit an employer, educational institution, and State or local government agencies, officials, and employees from requiring applicants to disclose information concerning any arrests, criminal charges, or criminal convictions that have been expunged. Violation would be a Class 3 misdemeanor. Senator Daniel offered an amendment and Brenda Carter, a staff attorney with the Research Division, was recognized to explain. It would change certain misdemeanors to civil penalties and the proceeds from the penalties would go to school funds. Greg Stahl, representing the NC Sheriffs Association, was recognized and requested exemption for law enforcement. Connie Wilson, a lobbyist for the Employers Coalition of North Carolina, was recognized to express similar concerns. Senator Allran moved the bill from the agenda so that parties would have an opportunity to get their concerns addressed. A copy of the PCS, the summary, and the amendment is attached.

H.B. 19 – Respect Our Fallen Heroes

Representative Hastings was recognized to explain the bill which would increase the penalty for disorderly conduct at a funeral, memorial service, or family processional to a funeral or memorial service. It would also enlarge the period of time and the area within which such conduct would be prohibited. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note is attached.

S.B. 70 – Kilah's Law Increase Child Abuse Penalties

Senator Tarte was recognized to explain the bill. It would increase the penalties for child abuse, and would provide for a recordkeeping system that identifies child abuse offenders. Senator Tucker moved for a favorable report with a referral to the Appropriations Committee. The motion carried. A copy of the bill, the summary, and the incarceration note is attached.

The meeting adjourned at 10:49 a.m.

Austin Allran

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	February 26, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 19	Respect our Fallen Heroes.	Representative Hastings Representative T. Moore Representative Arp Representative Szoka
SB 70	Kilah's Law Increase Child Abuse Penalties.	Senator Tarte Senator Tucker Senator Curtis
SB 91	Prohibit Expunction Inquiry.	Senator Daniel Senator Goolsby Senator Kinnaird

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, February 26, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

HB **19** Respect our Fallen Heroes.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **70** Kilahs Law Increase Child Abuse Penalties.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Jeffery Tarte will handle SB 70

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 91
PROPOSED COMMITTEE SUBSTITUTE S91-CSRV-3 [v.1]

2/25/2013 11:20:34 PM

Short Title: Prohibit Expunction Inquiry. (Public)

Sponsors:

Referred to:

February 18, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL FOR AN EMPLOYER, EDUCATIONAL INSTITUTION, OR STATE OR LOCAL GOVERNMENT AGENCY TO REQUEST INFORMATION FROM AN APPLICANT FOR EMPLOYMENT OR ADMISSION REGARDING AN ARREST, CRIMINAL CHARGE, OR CRIMINAL CONVICTION OF THE APPLICANT THAT HAS BEEN EXPUNGED.

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-153. Prohibited practices by employers, educational institutions, agencies of State and local governments.**

(a) Purpose. – The purpose of this section is to clear the public record of any entry of any arrest, criminal charge, or criminal conviction that has been expunged so that (i) the person who is entitled to and obtains the expunction may omit reference to the charges or convictions to potential employers and others and (ii) a records check for prior arrests and convictions will not disclose the expunged entries.

(b) Prohibit Employer or Educational Institution From Requiring Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests, charges, or convictions that have been expunged.

(c) Prohibit State or Local Government Agencies, Officials, and Employees From Requiring Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – Agencies, officials, and employees of the State and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges or convictions that have been expunged. Such an application shall not be denied solely because of the applicant's refusal or failure to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

(d) The provisions of this section do not apply to any applicant or licensee seeking or holding any certification issued by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to Chapter 17C of the General Statutes or the North Carolina Sheriffs Education and Training Standards Commission pursuant to Chapter 17E of the General Statutes.

(e) Punishment. – A person who willfully violates this section is guilty of a Class 3 misdemeanor for each violation."

SECTION 2. This act becomes effective December 1, 2013. G.S. 15A-153(e), as enacted by Section 1 of this act, applies only to violations of G.S. 15A-153 that occur on or after December 1, 2013.

SENATE BILL 91:
Prohibit Expunction Inquiry

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 25, 2013
Introduced by:	Sens. Daniel, Goolsby, Kinnaird	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S91-CSRV-3		

SUMMARY: ***Senate Bill 91 would prohibit an employer, educational institution, and State or local government agencies, officials, and employees from requiring applicants to disclose information concerning any arrests, criminal charges, or criminal convictions that have been expunged. Violation would be a Class 3 misdemeanor.***

CURRENT LAW: In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Provisions for the expunction of criminal records are set out in Article 5, Chapter 15A of the General Statutes. Expunction is the process by which a record of criminal conviction is removed by order of the court. A chart attached to this summary provides general information about the circumstances under which expunction may be granted.

When expunction is granted the person whose record is expunged may, for most purposes, treat the event as if it never occurred. However, when pursuing certification as a law enforcement officer, a person whose record has been expunged pursuant to G.S. 15A-145.4 (under age 18 at the time of commission of a nonviolent felony) must disclose any and all felony convictions even if the felony convictions were expunged. A similar provision requires disclosure by an applicant whose conviction record has been expunged pursuant to G.S. 15A-145.5 (expunction of certain misdemeanors and felonies; no age limitation).

Pursuant to G.S. 15A-151 the Administrative Office of the Courts maintains a confidential file containing the names of people who have been granted an expunction. The information may be disclosed to a judge for the purpose of ascertaining whether a person charged with an offense has previously been granted an expunction. Expunction information may also be disclosed to State and local law enforcement agencies for employment purposes or to the North Carolina Criminal Justice Education and Training and Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes. Both Commissions have the statutory authority to deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction has been expunged.

BILL ANALYSIS: Senate Bill 91 would provide that certain applicants need not include a reference to or information concerning arrests, charges or convictions that have been expunged when responding to questions concerning any arrest or criminal charge that has not resulted in a conviction. The bill would:

- Prohibit an employer or educational institution from requiring an applicant for employment or admission to disclose information concerning any arrests, criminal charges, or criminal convictions that have been expunged;
- Prohibit State or local government agencies, officials, and employees from requiring an applicant for a license, permit, registration or governmental service to disclose information concerning any arrest, criminal charge, or criminal conviction that has been expunged. Such applications could

not be denied solely because of the applicant's refusal or failure to disclose information concerned the expunged information.

Willful violation would be a Class 3 misdemeanor. The proposed committee substitute adds an exemption that applies to any applicant or licensee seeking or holding any certification issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs Education and Training Standards Commission.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and the penalty would apply to violations occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 91

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

S91-ARV-2 [v.1]

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

Date _____,2013

Senator Daniel

moves to amend the bill on page 2, lines 6-7 by rewriting those lines to read:

"(e) Any person who violates subsection (a) of this section shall be subject to a civil penalty of up to two hundred fifty dollars ($250.00) for each violation, upon investigation by the Commissioner of Labor or the Commissioner's authorized representative. In determining the amount of the penalty, the Commissioner shall consider the gravity of the violation and the appropriateness of the penalty for the size of the employer or the institution charged. With regard to any civil penalty provided for in this subsection, the following shall apply:

(1) The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and which final determination shall be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter 150B.

(2) The amount of the penalty when finally determined may be recovered in a civil action brought by the Commissioner in the General Court of Justice.

(3) The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(3) Assessment of penalties under this subsection shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation.

(4) The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for carrying out the provisions of this subsection. The rules adopted shall promote individual dignity and privacy while not posing an undue burden on employers or institutions."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 91

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

S91-ARV-2 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPUNCTION OF CRIMINAL RECORDS IN NORTH CAROLINA

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
G.S. 15A-146 **Charges Dismissed or there is a finding of Not Guilty**	Misdemeanor or felony. Infraction under G.S. 18B-302(i) [purchase or possession of malt beverages or unfortified wine, or consumption of any alcoholic beverage, by a person 19 or 20 years old] prior to December 1, 1999.	None	Charges dismissed or finding of not guilty for offense. Not applicable if person has had previous expungement* of any kind or has a felony conviction. **Unless the previous expungement was prior to October 1, 2005 and was for an offense that occurred within the same 12-month period or was dismissed in the same term of court as the offense(s) for which the current expungement is sought.*
G.S. 15A-147 **Charges Dismissed or there is a finding of Not Guilty, as Result of Identity Theft**	Infraction, misdemeanor or felony	None	Charges brought as result of identity theft and charges dismissed, finding of not guilty, or conviction is set aside. No costs taxed against petitioner.
G.S. 15A-145.2(b) G.S. 15A-145.3(b) **Charges Dismissed Certain Drug Offenses/Toxic Vapors Act**	Possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.	None	Charges dismissed or finding of not guilty. Person must be 21 or under at time of offense.
G.S. 15A-149 **Pardon of Innocence**	Any offense	None	Petitioner has received pardon of innocence from the Governor

Prepared by: *Brenda Carter & Susan Sitze, Staff Attorneys*
Research Division, NC General Assembly
January, 2013

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
G.S. 7B-3200(h) **Juvenile Records** Alleged Delinquent/Undisciplined	Any allegation of juvenile delinquency. Any allegation of undisciplined juvenile.	Petitioner is 16 years or older. Petitioner is 18 years or older.	Delinquency alleged, but juvenile petition dismissed. Undisciplined alleged, but juvenile petition dismissed.
G.S. 7B-3200(a),(b) **Juvenile Records** Adjudicated Delinquent/Undisciplined	Any adjudication of undisciplined. Any adjudication of delinquency for a misdemeanor or Class F-I felony.	Petitioner is 18 years or older. For delinquency, at least 18 months after release from juvenile court jurisdiction.	Petitioner has had no subsequent delinquent adjudications or convictions of a misdemeanor or felony as an adult.
G.S. 15A-145 **First Offender Under 18** **(Age 21 for certain alcohol offenses)**	Misdemeanor	Whichever of the following is later: • 2 years after the date of conviction; • Completion of any period of probation,	No other convictions. Petitioner must have been: • Under 18 at the time of the offense; or • If offense is misdemeanor possession of alcohol in violation of G.S. 18B-302(b)(1), petitioner must have been under 21 at the time of the offense.
G.S. 15A-145.1 and G.S. 14-50.29 **Certain Gang Offenses**	Class H felony under Street Gang Suppression Act Enhanced offense under G.S. 14-50.22 (enhances any criminal offense by one class if done as part of gang activity)	After discharge and dismissal (conditional discharge) For convictions, whichever of the following is later: • 2 years after the date of conviction; • Completion of any period of probation.	Petitioner must have been under 18 at the time of the offense. Petitioner has no prior misdemeanor or felony convictions.

Prepared by: Brenda Carter & Susan Sitze, Staff Attorneys
Research Division, NC General Assembly
January, 2013

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
G.S. 14-458.1(c) **Cyberbullying**	Cyberbullying by person under the age of 18 years.	Upon discharge and dismissal.	Petitioner must have been under 18 at the time of the offense. Expunction is pursuant to G.S. 15A-146.
G.S. 15A-145.2(a) G.S. 15A-145.3(a) **First-time drug offenders** (Discharge & Dismissal)	Possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.	Upon discharge and dismissal under G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1).	Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior discharge and dismissal under this statute.
G.S. 15A-145.2(c) G.S. 15A-145.3(c) **First-time drug offenders** (Convicted)	Possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia	No sooner than 12 months after conviction.	Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior expunctions under this statute.
CITATION	**ELIGIBLE OFFENSES**	**WAITING PERIOD**	**STIPULATIONS**
G.S. 15A-145.4 ***Nonviolent Felony***	Class H or Class I felony that does not include assault as an essential element of the offense, does not require the offender to register as a sex offender, or is otherwise specifically excluded.	Four years from date of conviction	Petitioner must have been under 18 at the time of the offense. Petitioner must *possess a high school diploma, graduation equivalency certificate, or a GED; and must have completed at least 100 hours of community service since the conviction.*

Prepared by: *Brenda Carter & Susan Sitze, Staff Attorneys*
Research Division, NC General Assembly
January, 2013

G.S. 15A-145.5 **Nonviolent Misdemeanor** **Nonviolent Felony**	Nonviolent misdemeanor or nonviolent felony – *Does not apply to Class A-G felonies, Class A1 misdemeanors, assault offenses, certain stalking or sex-related offenses, certain felony drug offenses, felony offenses involving commercial motor vehicles, offenses involving ethnic animosity, or offenses that are otherwise excluded.*	15 years from date of conviction or date of completion of probation or post-release supervision, whichever is later	Petitioner must have no other convictions and no prior expunction of a conviction.

Prepared by: *Brenda Carter & Susan Sitze, Staff Attorneys*
Research Division, NC General Assembly
January, 2013

HOUSE BILL 19

Short Title:	Respect our Fallen Heroes.	(Public)
Sponsors:	Representatives Hastings, T. Moore, Arp, and Szoka (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee B.	

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO HONOR FALLEN HEROES BY STRENGTHENING THE LAW THAT PROHIBITS DISORDERLY CONDUCT AT A FUNERAL, MEMORIAL SERVICE, OR PROCESSIONAL ROUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-288.4 reads as rewritten:

"**§ 14-288.4. Disorderly conduct.**

(a) Disorderly conduct is a public disturbance intentionally caused by any person who does any of the following:

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

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

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

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

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

b. An order given by any fireman or public health officer acting within the scope of the fireman's or officer's authority.

c. If an emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of the officer's authority.

(5) Shall, after being forbidden to do so by the chief administrative officer, or the officer's authorized representative, of any public or private educational institution:

a. Engage in any sitting, kneeling, lying down, or inclining so as to obstruct the ingress or egress of any person entitled to the use of any building or facility of the institution in its normal and intended use; or

b. Congregate, assemble, form groups or formations (whether organized or not), block, or in any manner otherwise interfere with the operation or functioning of any building or facility of the institution so as to interfere with the customary or normal use of the building or facility.

(6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto.

(6a) Engages in conduct which disturbs the peace, order, or discipline on any public school bus or public school activity bus.

(7) Except as provided in subdivision (8) of this subsection, disrupts, disturbs, or interferes with a religious service or assembly or engages in conduct which disturbs the peace or order at any religious service or assembly.

(8) Engages in conduct with the intent to impede, disrupt, disturb, or interfere with the orderly administration of any funeral, memorial service, or family processional to the funeral or memorial service, including a military funeral, service, or family processional, or with the normal activities and functions occurring in the facilities or buildings where a funeral or memorial service, including a military funeral or memorial service, is taking place. Any of the following conduct that occurs within ~~one hour~~ two hours preceding, during, or within ~~one hour~~two hours after a funeral or memorial service shall constitute disorderly conduct under this subdivision:

a. Displaying, within ~~300~~500 feet of the ceremonial site, location being used for the funeral or memorial, or the family's processional route to the funeral or memorial service, any visual image that conveys fighting words or actual or imminent threats of harm directed to any person or property associated with the funeral, memorial service, or processional route.

b. Uttering, within ~~300~~500 feet of the ceremonial site, location being used for the funeral or memorial service, or the family's processional route to the funeral or memorial service, loud, threatening, or abusive language or singing, chanting, whistling, or yelling with or without noise amplification in a manner that would tend to impede, disrupt, disturb, or interfere with a funeral, memorial service, or processional route.

c. Attempting to block or blocking pedestrian or vehicular access to the ceremonial site or location being used for a funeral or memorial.

As used in this section the term "building or facility" includes the surrounding grounds and premises of any building or facility used in connection with the operation or functioning of such building or facility.

(b) Except as provided in subsection (c) of this section, any person who willfully engages in disorderly conduct is guilty of a Class 2 misdemeanor.

(c) A person who commits a violation of subdivision (8) of subsection (a) of this section is guilty of:

(1) A ~~Class 2~~ Class 1 misdemeanor for a first offense.

(2) A Class ~~1 misdemeanor~~ I felony for a second offense.

(3) A ~~Class I~~ Class H felony for a third or subsequent offense."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 19:
Respect our Fallen Heroes

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 25, 2013
Introduced by:	Reps. Hastings, T. Moore, Arp, Szoka	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 19 would increase the penalty for disorderly conduct at a funeral, memorial service, or family processional to a funeral or memorial service and enlarge the period of time and the area within which such conduct would be prohibited.***

CURRENT LAW: G.S. 14-288.4 makes it unlawful to engage in certain conduct within 300 feet of a ceremonial site during a funeral or memorial service or within one hour preceding or after the event, with the intent to interfere with the orderly administration of the funeral or memorial service, or with a family processional to the site. Prohibited conduct includes displaying any visual image that conveys fighting words or actual or imminent threats of harm directed to any person or property associated with the funeral; uttering loud, threatening, or abusive language or singing, chanting, whistling, or yelling in a disruptive manner; and attempting to block or blocking pedestrian or vehicular access to the location. Violation is a Class 2 misdemeanor for a first offense; a Class 1 misdemeanor for a second offense; and a Class I felony for a third or subsequent offense.

BILL ANALYSIS: House Bill 19 would increase the period of time and the area within which it is unlawful to engage in certain conduct at a location where a funeral, memorial service, or family processional to a funeral or memorial service is taking place. The bill would amend the law to include conduct that occurs during the period ***beginning two hours before*** the funeral or memorial service and ***ending two hours after*** the funeral or memorial service and that occurs ***within 500 feet*** of the ceremonial site. House Bill 19 would also increase the penalty for disorderly conduct at a funeral.

- A first offense would be increased from a Class 2 misdemeanor to a Class 1 misdemeanor. Assuming the offender has no prior record, a Class 1 misdemeanor is punishable by 1-45 days of community punishment. A fine may be imposed in conjunction with any community punishment or may be imposed as the only punishment; the amount of the fine is in the discretion of the court.
- A second offense would be increased from a Class 1 misdemeanor to a Class I felony. Assuming the offender only has the 1 prior record point for conviction of the first offense, the presumptive minimum sentence for the Class I felony would be 4-6 months community or intermediate punishment. An intermediate punishment can include any regular condition of probation and may include fines, restitution, community service, outpatient treatment, or any other statutorily authorized sanction or condition of probation.
- A third or subsequent offense would be increased from a Class I felony to a Class H felony. Assuming the offender only has the 3 prior record points for conviction of the first two offenses, the presumptive minimum sentence for the Class H felony would be 5-6 months community, intermediate, or active punishment. A fine may be imposed in conjunction with any disposition.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

O. Walker Reagan
Director

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 19 (First Edition)

SHORT TITLE: Respect Our Fallen Heroes.

SPONSOR(S): Representatives T. Moore and Hastings

FISCAL IMPACT

($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Department of Public Safety; Administrative Office of the Courts; Office of Indigent Defense Services

EFFECTIVE DATE December 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:
This bill may have a fiscal impact. However, the Fiscal Research Division cannot estimate the cost of this bill at this time because we cannot estimate how many people may be charged with this crime. The following costs may be incurred if the violations of this statute are reclassified as outlined in this bill:

- A second violation of this statute would be a Class I felony rather than a Class 1 misdemeanor. Under the Justice Reinvestment Act, all felons are now required to be supervised for a minimum of nine months after release from prison, at a cost of $980 per offender.
- A third violation under this statute would be a Class H felony rather than a Class I felony. Increased court and incarceration costs for a Class H felony over a Class I felony would be approximately $8,174 per offender.

BILL SUMMARY: H.B.19, Respect Our Fallen Heroes, expands and reclassifies an existing offense. The bill amends the offense in G.S. 14-288.4, Disorderly Conduct, subsection (a)(8) by expanding its scope, and reclassifies the newly expanded offense in G.S. 14-288.4(a)(8) by amending the violation provisions in G.S. 14-288.4(c).

This bill also reclassifies violations of G.S. 14-288.4(a)(8), by amending G.S. 14-288.4(c). Currently, G.S. 14-288.4(c) makes a first violation of G.S. 14-288.4(a)(8) a Class 2 misdemeanor, a second violation a Class 1 misdemeanor, and third or subsequent violations a Class I felony. This bill amends G.S. 14-288.4(c) to provide that a first offense shall be a Class 1 misdemeanor, a second offense shall be a Class I felony, and third or subsequent offenses shall be a Class H felony. The act becomes effective December 1, 2013 and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

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

In calendar year 2012, five defendants were charged with a first offense of violating G.S. 14-288.4(a)(8). Of these, none were convicted. Presently, AOC estimates that the elevation of the offense from a Class 2 misdemeanor to a Class 1 misdemeanor could result in an increased cost of $77 per case (the difference between a Class 1 misdemeanor ($165) and a Class 2 misdemeanor ($88)). If, for example, five defendants per year now face the elevated charge, the cost to the court system would be $385 annually.

The elevation of the Class 1 misdemeanor (second offense) to a Class I felony, and the Class I felony (third-or-subsequent offense) to a Class H felony could result in a more vigorous defense and therefore more time for superior court personnel. On average, increasing a criminal penalty from a Class 1 misdemeanor to a Class I felony costs an additional $200 ($365 for a Class 1 felony; $165 for a Class 1 misdemeanor) and the increase from the Class I felony to a Class H felony will increase costs by $136 ($501 for a Class H felony; $365 for a Class I felony).

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that elevating a Class 1 misdemeanor to a Class I felony will result in an increase of $55 per case for a private appointed counsel (PAC) attorney in district courts. In superior court, IDS estimates that elevating a Class

1 misdemeanor to a Class I felony will increase costs by $75 (if the case does not go to trial) and $199(if it does).

IDS further estimates that the cost of elevating a Class I felony to a Class H felony will result in an increase of $14 per case for PAC attorneys in district courts. In superior court, for the same reclassification from Class I felony to Class H felony, IDS estimates that the cost of a PAC attorney will increase by $50 if the case does not go to trial and $134 if it does.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. The Sentencing Commission cannot estimate how many inmates will be added to the system by this specific legislation in FY 2014-15. There were no convictions under the existing statute (G.S. 14-288.4(a)(8)) during FY 2011-12.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	38,999	39,062	39,091	39,047	39,135
2. Prison Beds (Expanded Capacity)	40,926	40,926	40,926	40,926	40,926
3. Beds Over/(Under) Inmate Population	(1,927)	(1,864)	(1,835)	(1,879)	(1,791)
4. Additional Inmates Due to this Bill[3]			***No estimate available.***		
5. Additional Beds Required					

This bill reclassifies a first violation of this statute from misdemeanor Class 2 to misdemeanor Class 1. In FY 2011-12, 26% of Class 1 misdemeanor resulted in active sentences. The average sentence imposed for Class 1 convictions was 39 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement program (91-180 days) or

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2012.

[3] Criminal penalty bills effective December 1, 2013, should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

in county jails (90 days or less). Therefore, convictions of this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Department of Public Safety – Community Correction Section

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

This bill reclassifies a second violation of the statute from a misdemeanor Class 1 to a felony Class I. Since JRA requires that all felons be supervised after their release from prison, this bill may impact the community corrections population. The cost of supervision is $3.63 per day, per offender, with a minimum length of nine months. Therefore, each offender who serves an active sentence under this revised statute will incur a minimum supervision cost of $980 ($3.63 per day times 270 days equals $980). However, since the minimum nine-month term of post-release supervision applies to all persons convicted of a felony, reclassifying the third violation of this statute from Class I to Class H does not increase supervision costs beyond those already incurred by a Class I felony.

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lisa Fox

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: February 6, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

[4] DCC incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 70*

Short Title:	Kilah's Law/Increase Child Abuse Penalties.	(Public)
Sponsors:	Senators Tarte, Tucker, Curtis (Primary Sponsors); Apodaca, Brock, Harrington, Hise, and Rabin.	
Referred to:	Judiciary II.	

February 11, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR VARIOUS CRIMINAL OFFENSES OF FELONY CHILD ABUSE AND TO REQUIRE THAT THE OFFICIAL RECORD OF A DEFENDANT CONVICTED OF CHILD ABUSE OR OTHER ASSAULTS AGAINST A MINOR INDICATES THAT THE OFFENSE INVOLVED CHILD ABUSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a ~~Class E~~ Class D felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the child is guilty of child abuse and shall be punished as a ~~Class E~~ Class D felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon the child is guilty of a ~~Class E~~ Class D felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a ~~Class C~~Class B2 felony.

(a4) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

(a5) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a ~~Class H~~ Class G felony if the act or omission results in serious physical injury to the child.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) Abandonment of an infant less than seven days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant.

(d) The following definitions apply in this section:

(1) 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.

(2) Serious physical injury. – Physical injury that causes great pain and suffering. The term includes serious mental injury."

SECTION 2. G.S. 15A-1382.1 reads as rewritten:

"**§ 15A-1382.1. Reports of disposition; domestic violence; <u>child abuse;</u> sentencing.**

(a) When a defendant is found guilty of an offense involving assault, communicating a threat, or any of the acts as defined in G.S. 50B-1(a), the presiding judge shall determine whether the defendant and victim had a personal relationship. If the judge determines that there was a personal relationship between the defendant and the victim, then the judge shall indicate on the form reflecting the judgment that the case involved domestic violence. The clerk of court shall insure 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 domestic violence.

<u>(a1) When a defendant is found guilty of an offense involving child abuse or is found guilty of an offense involving assault or any of the acts as defined in G.S. 50B-1(a) and the offense was committed against a minor, then the judge shall indicate on the form reflecting the judgment that the case involved child abuse. 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 child abuse.</u>

(b) Repealed by Session Laws 2012-39, s. 2, effective December 1, 2012, and applicable to defendants placed on probation on or after that date.

(c) The following definitions apply to this section:

(1) "An offense involving assault" includes any offense where an assault occurred, whether or not the conviction is for an offense under Article 8 of Chapter 14 of the General Statutes.

(2) "Inquiry" shall include any lawful review of the criminal records of persons convicted of an offense in this State, whether by law enforcement personnel or by private individuals.

(3) "Personal relationship" is as defined in G.S. 50B-1(b)."

SECTION 3. This act becomes effective December 1, 2013. Section 1 of this act applies to offenses committed on or after that date. Section 2 of this act applies to judgments entered on or after that date.

SENATE BILL 70:
Kilah's Law Increase Child Abuse Penalties

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 22, 2013
Introduced by:	Sens. Tarte, Tucker, Curtis	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***This act would increase the penalties for child abuse, and provides for a recordkeeping system that identifies child abuse offenders. The penalty increases become effective December 1, 2013, and apply to offenses committed on or after that date; the child abuse designation on court records is effective for judgments entered on or after December 1, 2013.***

[As introduced, this bill was identical to H75, as introduced by Reps. Horn, Stevens, Arp, Glazier, which is currently in House Appropriations.]

BILL ANALYSIS:

Section 1

(1) Subsections (a), (a1) and (a2)

- Increases the penalty from a Class E to a Class D felony for a parent or person caring for a child under 16, who intentionally inflicts serious physical injury upon the child, or assaults the child resulting in serious physical injury.
- Increases the penalty from a Class E to a Class D felony for a parent or person caring for a child under 16, who commits, permits, or encourages an act of prostitution with or by the child.
- Increases the penalty from a Class E to a Class D felony for a parent or legal guardian who commits or allows the commission of a sexual act upon a child under 16.

The current Class E felony gives the court the option to sentence the defendant to a minimum sentence of active time in prison in the range of 20 to 25 months, but also allows the court to sentence the prisoner to an intermediate sanction. By increasing the penalty to a Class D, the court must sentence the defendant to active time, with a minimum presumptive sentence of between 51 and 64 months for a first offender.

(2) Subsection (a3)

- Increases the penalty from a Class C to a Class B2 felony for a parent or person caring for a child under 16 who (i) intentionally inflict serious bodily injury upon the child, or (ii) assaults the child resulting in serious bodily injury or in permanent or protracted loss or impairment of any mental or emotional function.

For a Class C felony, the court must sentence the offender to active time. The minimum presumptive range is 58-73 months. The minimum presumptive range for a Class B2 offense is 125 to 157 months; consequently, the increase will allow for a sentence which is at least twice as long as that which could be adjudged at the Class C level.

The North Carolina Sentencing and Policy Advisory Commission has created an advisory felony classification system. The current classification schedule provides that a Class B offense is one that results in "serious debilitating long-term personal injury." The last portion of that subsection relates to

causing permanent or protracted loss or impairment; consequently increasing the penalty for this portion would be consistent with the Sentencing Commission criteria. Generally, causing "serious bodily injury" (without long-term effects) is a Class E felony.

(3) Subsection (a5)

- Increases the penalty from Class H to Class G for willful acts or grossly negligent omissions that cause serious bodily injury. The Sentencing Commission criteria provides for a Class F penalty where an act results in significant personal injury. The minimum range for Class H is 5-6 months, with the option of community punishment, intermediate sanction, or active time. The available sentences for a Class G felony include intermediate sanctions or active time, with a 10-13 months minimum presumptive range.

Section 2

The act provides that if a defendant is found guilty of child abuse, or an act of domestic violence against a minor, then the court shall indicate on the judgment form that the offense involved child abuse. Inquiries into the defendant's criminal record would reflect that he or she had been convicted of an offense involving child abuse.

EFFECTIVE DATE: This act becomes effective December 1, 2013; section 1 applies to offenses committed on or after that date and section 2 applies to judgments entered on or after that date

S70-smrk-10(e1)

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 70 (First Edition)

SHORT TITLE: Kilah's Law Increase Child Abuse Penalties.

SPONSOR(S): Senators Tucker, Tarte, and Curtis

FISCAL IMPACT

($ in thousands)

☑ Yes ☐ No ☐ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:	to	to	to	to	to
General Fund Expenditures:	421.9 to 645.2	843.7 to 1,297.5	843.7 to 1,297.5	843.7 to 1,297.5	843.7 to 1,297.5
Special Fund Revenues:	to	to	to	to	to
Special Fund Expenditures:	to	to	to	to	to
State Positions:	to	to	to	to	to
NET STATE IMPACT	($421.9) to ($645.2)	($843.7) to ($1,297.5)	($843.7) to ($1,297.5)	($843.7) to ($1,297.5)	($843.7) to ($1,297.5)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Department of Public Safety, Administrative Office of the Courts, Indigent Defense Services

EFFECTIVE DATE: December 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: $371,092 in FY 2013-14 and $742,184 annually in subsequent years
- Indigent Defense Services: $101,560 increased costs in superior court without a trial
  $548,300 increased costs in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of $980- $1,325 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of HB 75 amends existing G.S. 14-318.4, Child abuse a felony, to increase, by one classification, the felony class of each offense listed in that section. The one exception is the serious bodily injury offense in subsection (a4) of the statute, which would remain a Class E felony. Section 2 amends G.S. 15A-1382.1, Reports of disposition; domestic violence; child abuse; sentencing; to require a special entry on the judgment form and on the automated court record when the court finds that the defendant committed an offense involving child abuse, an offense involving assault on a minor, or an offense involving an act of domestic violence against a minor, so that any inquiry into the defendant's criminal record will reflect that the offense involved child abuse. This bill becomes effective December 1, 2013. Section 1 applies to offenses committed on or after that date; Section 2 applies to judgments entered on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

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

In fiscal year 2011-12, 161 defendants were charged with intentionally inflicting any serious physical injury on a child. The AOC estimates the average cost to the court for each case would be $3,465.

AOC further reports that in FY 2011-12, three defendants were charged with committing, permitting, or encouraging any act of child prostitution. Of these, none were convicted. The AOC estimates the average cost to the court for each case would be $3,465.

AOC reports that 32 defendants were charged with committing or allowing the commission of any sexual act with a child in FY 2011-12. Of these, five were convicted. AOC estimates the average cost to the court for each case would be $3,465.

AOC reports that in FY 2011-12, approximately 84 defendants were charged with intentionally inflicting any serious bodily injury on a child resulting in permanent or protracted loss or impairment. Of these, 12 were convicted. AOC estimates the average cost to the court for each case would be $8,730.

AOC reports that in calendar year FY 2011-12, 12 defendants were charged with a willful act or grossly negligent omission of a child resulting in serious physical injury. Of these, six were convicted. AOC estimates the average cost to the court for each case would be $752. The following table illustrates the effect of the new bill on AOC costs for the first full year of implementation:

Table 1: Potential Impact of Kilah's Law, Section 1

General statute	Offense description	Existing charge class (felony)	New charge class (felony)	Number of defendants in FY 2012	Monetary increase per case	Total monetary increase
14-318.4(a)	Intentionally inflict serious injury	E	D	161	$1,847	$297,367
14-318.4(a1)	Commit, permit, or encourage any act of prostitution	E	D	3	$1,847	$5,541
14-318.4(a2)	Commit or allow the commission of any sexual act	E	D	32	$1,847	$59,104
14-318.4(a3)	Intentionally inflict any serious bodily injury resulting in permanent or protracted loss or impairment	C	B2	84	$4,490	$377,160
14-318.4(a5)	Willful act or grossly negligent omission resulting in serious physical injury	H	G	12	$251	$3,012
					Total Annual Estimate:	**$742,184**

AOC estimates that Section 2 of this bill will require updating the offense classification of the five offenses specified in this Bill, costing $79,950.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. Since the majority of these cases will go to Superior Court, the District Court costs were not calculated. In superior court, IDS estimates that the increased cost of a PAC attorney per case for a D level Class Offense would be $281 if the case does not go to trial and $1,287 if it does.

IDS further estimates that the increased cost of a PAC attorney per case in Superior Court for a new B2 level Class Offense would be $554 if the case does not go to trial and $3560 if it does.

IDS further estimates that the increased cost of a PAC attorney per case in Superior Court for a new G level Class Offense would be $88 if the case does not go to trial and $344 if it does. The following table illustrates the effect of the new bill on IDS per case costs:

General Statute	Current Felony Class	Proposed Felony Class	Per Case Cost Increase for PDs	Per Case Cost Increase for Contractors	Per Case Cost Increase for PAC*
14-318(a)	E	D	Not quantifiable	$707.22	$281 non-trial $1,287 trial
14-318.4(a1)	E	D	Not quantifiable	$707.22	$281 non-trial $1,287 trial
14-318(a2)	E	D	Not quantifiable	$707.22	$281 non-trial $1,287 trial
14-318(a3)	C	B2	Not quantifiable	$0	$554 non-trial $3,560 trial
14-318(a5)	H	G	Not quantifiable	$0	$88 non-trial $344 trial

Assuming the offenders charged in 2012 had been prosecuted under this proposed legislation, the cost to the judicial system would have increased by the following amounts. The increased cost of a PAC attorney for all additional D level Class Offenses would be $55,076 if no cases go to trial (196 offenders times $281 non-trial costs) and $252,252 if they all go to trial (196 offenders times $1,287 non-trial costs).

The increased cost of a PAC attorney for all additional B2 level Class Offenses would be $45,428 (82 offenders times $554 non-trial costs) if no cases go to trial and $252,252 if they all go to trial (82 offenders times $3,560 non-trial costs).

The increased cost of a PAC attorney for all additional G level Class Offenses would be $1,056 (12 offenders times $88 non-trial costs) if no cases go to trial and $4,128 if they all go to trial (12 offenders times $344 non-trial costs).

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add more than 32 inmates to the prison system by the end of FY 2014-15.

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	*17*	*32*	*32+**	*32+**	*32+**
5. Additional Beds Required					

* The Sentencing and Policy Advisory Commission provides two year threshold projections. Projections beyond the two year horizon are estimates.

In addition, impact on the prison population will occur if Class C convictions become Class B2 convictions under the proposed statute because of the longer average estimated time served (183 months compared to 81 months for Class C). No additional prison beds would be needed in the short term due to the long sentence lengths. Long-term impact on the prison population would begin in year six due to the longer sentence lengths for Class B2 felony convictions, and would continue as individuals convicted of this offense accumulate in the prison population over the years.

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[2] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 100% of Class D felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1325 per offender ($3.63 per day times 365 days).[3]

[2] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

[3] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

In FY 2011-12, 100% of Class B2 felony offenders received active sentences. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1325 per offender ($3.63 per day times 365 days).[4]

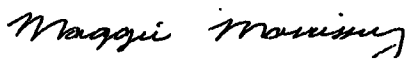
In FY 2011-12, 42% of Class G felony offenders received active sentences; 58% received intermediate sentences; and none received community punishments. All active sentences result in 9 months of post-release supervision (PRS). The average length of intermediate punishment imposed for this offense class was 31 months. Therefore, at a minimum, one conviction resulting from Subsection (a5) of this bill will require at least nine months of PRS. The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5]

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Maggie Morrissey



APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: February 26, 2013

[4] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 2-25 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Austin Jones	Clinton	Berger
2 Emily Edwards	Clinton	Berger
3		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: **02/26/2013** ROOM: **1124**

1. ROBERT YOUNG
2. CANTON LEWIS
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 26, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
KELLY PEREZ	Junior League of Charlotte
Saka Perdue	NC Sent. Commission
John Madler	" "
JAVIER VILLARREAL	UNC-CH
[signature]	ZKICY
[signature]	LHTA

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 26, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Todd Barlow	NC Advocates for Justice
Jordan Smith	NCLM
[signature]	NCRMA
[signature]	NCBAA
Kay Emanuel	UNC School of Government
Daniel Bowes	NC Justice Center
Janet Thoren	NCREC
Lindsay Gildea	JLC
Andrew Cagle	NC Sheriffs' Assn
[signature]	NC Sheriffs' Assoc

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 26, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kristin O'Connor	NCDHHS/Division of Social Services 325 N. Salisbury Raleigh
Angelina	Exchange/SCAN (Stop Child Abuse Now) 207 Walnut St., Statesville, N.C. 28677
Steve Brewer	CTL
Connie Wilson	ECNC
Sarah Hardin	CTL
Megan Cassella	UNC Chapel Hill
Pat Gannon	NC Insider
Cady Thomas	NCAR
Dirk Gorham	ATS
ANDREW TRIPP	STAFF
Mary Elizabeth Smith	Staff

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 26, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Shirley Parker	Staff
Rick Taylor	NCAE
Mildred Spearman	NCAOE
Rick Zechini	Williams Mullen
S. Henri McClees	McClees Consulting
Sarah Preston	ACLU-NC

Senate Committee on Judiciary II
Thursday, February 28, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 20	Good Samaritan Law/Naloxone Access.	Sen. Bingham Sen. Allran
SB 33	Use of Criminal History Records by Lic. Bds.	Sen. Hartsell
SB 91	Prohibit Expunction Inquiry.	Sen. Daniel Sen. Goolsby Sen. Kinnaird

Adjournment

Senate Judiciary II Committee
Thursday, February 28, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, February 28, 2013 in room 1027 of the Legislative Building. Connor Applegate of Mooresville served as the page. Senator Allran presided as chair.

S.B. 20 – Good Samaritan Law/Naloxone Access

Senator Bingham was recognized to explain the bill. Senator Daniel moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would provide limited immunity for certain controlled substance offenses in cases of medical necessity. It would also provide immunity to a practitioner who dispenses an agent to treat overdoses, or an individual who administers the agent to another person. Fred Brason, President of Project Lazarus, was recognized to support the bill, stating that Naloxene has saved lives. Greg Stahl, representing the NC Sheriff's Association, was recognized to speak in favor of the bill. Senator Kinnaird moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 91 – Prohibit Expunction Inquiry

Senator Daniel was recognized to explain the bill. Senator Randleman moved to adopt the PCS for discussion and the motion carried. The PCS would prohibit employers, educational institutes, and State or local government agencies, officials, and employees from requiring applicants to disclose information concerning any arrests, criminal charges, or criminal convictions that have been expunged. The Commissioner of Labor would be authorized to assess a civil penalty of $500 against employers who violate provisions of the bill. In addition, the bill would provide for administrative action taken by a State or local government agency as a result of a person having been charged or convicted of a crime to be vacated, rather than reversed, when the record of that person's conviction has been expunged. Jennifer Haigwood, the Department of Labor's legislative liaison, expressed concerns about it being an unfunded mandate, but Senator Daniel thought that the volume of complaints will be minimal. Senator Tucker moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 33 – Use of Criminal History Records by Lic. Bds.

Senator Hartsell was recognized to explain the bill. Senator Bryant moved to adopt the PCS for discussion and the motion carried. The PCS would provide that if an applicant with a criminal record applies for an occupational license, and the law does not provide that a criminal conviction is an authomatic disqualifier, the occupational licensing board must consider certain factors in making a licensing determination. Brenda Carter, an attorney with the Research Division, was recognized to answer questions regarding criminal history background checks. Piggy Potter, a lobbyist for the NC Health Care Organizations, expressed concerns about some health care entities that are required to run background checks and other that are not; and whether the bill addressed those issues. Senator McKissick was recognized to run an amendment which adds character references for licensing consideration. He moved for the

adoption of the amendment and the motion carried. Senator Bryant moved for a favorable report. The motion carried. A copy of the PCS, the summary, and the amendment is attached.

The meeting adjourned at 10:54 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	February 28, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 20	Good Samaritan Law/Naloxone Access.	Senator Bingham Senator Allran
SB 33	Use of Criminal History Records by Lic. Bds.	Senator Hartsell
SB 91	Prohibit Expunction Inquiry.	Senator Daniel Senator Goolsby Senator Kinnaird

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, March 04, 2013

Senator Allran,
submits the following with recommendations as to passage:

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

SB **20** Good Samaritan Law/Naloxone Access.

Draft Number:	S20-PCS35078-RK-7
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **33** Use of Criminal History Records by Lic. Bds.

Draft Number:	S33-PCS75095-RK-6
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **91** Prohibit Expunction Inquiry.

Draft Number:	S91-PCS75097-RV-4
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Senator Stan Bingham will handle SB 20
Senator Fletcher Hartsell will handle SB 33
Senator Warren Daniel will handle SB 91

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 20
PROPOSED COMMITTEE SUBSTITUTE S20-CSRK-7 [v.2]
2/27/2013 3:24:18 PM

Short Title: Good Samaritan Law/Naloxone Access. (Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIMITED IMMUNITY FROM PROSECUTION FOR (1) CERTAIN DRUG-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING A DRUG-RELATED OVERDOSE AND (2) CERTAIN DRUG-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL EXPERIENCING A DRUG-RELATED OVERDOSE AND IN NEED OF MEDICAL ASSISTANCE; AND TO PROVIDE IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY FOR (1) PRACTITIONERS WHO PRESCRIBE, DISPENSE, OR DISTRIBUTE AN OPIOID ANTAGONIST TO CERTAIN THIRD PARTIES AND (2) CERTAIN INDIVIDUALS WHO ADMINISTER AN OPIOID ANTAGONIST TO A PERSON EXPERIENCING A DRUG-RELATED OVERDOSE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-96.2. Drug-related overdose treatment; limited immunity.**

(a) As used in this section, "drug-related overdose" means an acute condition including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(b) A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the person seeking medical assistance for the drug-related overdose.

(c) A person who experiences a drug-related overdose and is in need of medical assistance shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the drug-related overdose and need for medical assistance.

(d) Nothing in this section shall be construed to bar the admissibility of any evidence obtained in connection with the investigation and prosecution of other crimes committed by a person who otherwise qualifies for limited immunity under this section."

SECTION 2. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-106.2. Treatment of overdose with opioid antagonist; immunity.**

(a) As used in this section, "opioid antagonist" means naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose.

(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe, dispense, or distribute an opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. As an indicator of good faith, the practitioner, prior to prescribing, dispensing, or distributing an opioid under this subsection, may require receipt of a written communication that provides a factual basis for a reasonable conclusion as to either of the following:

(1) The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.

(2) The person other than the person who is at risk of experiencing an opiate-related overdose, and who is seeking the opioid antagonist is, in relation to the person at risk of experiencing an opiate-related overdose:

a. A family member, friend, or other person.

b. In the position to assist a person at risk of experiencing an opiate-related overdose.

(c) A person who receives an opioid antagonist that was prescribed, dispensed, or distributed pursuant to subsection (b) of this section may administer an opioid antagonist to another person if (i) the person has a good faith belief that the other person is experiencing a drug-related overdose and (ii) the person exercises reasonable care in administering the drug to the other person. Evidence of the use of reasonable care in administering the drug shall include the receipt of basic instruction and information on how to administer the opioid antagonist.

(d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:

(1) Any practitioner who prescribes, dispenses, or distributes an opioid antagonist pursuant to subsection (b) of this section.

(2) Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

SECTION 3. Section 1 of this act becomes effective December 1, 2013, and applies to persons needing or seeking medical assistance on or after that date. Section 2 of this act becomes effective December 1, 2013, and applies to persons prescribing, dispensing, distributing, or administering an opioid antagonist on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 20:
Good Samaritan Law/Naloxone Access

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 27, 2013
Introduced by:	Sens. Bingham, Allran	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S20-CSRK-7		Committee Counsel

SUMMARY: ***This act provides limited immunity for certain controlled substance offenses in cases of medical necessity, and also provides immunity to a practitioner who dispenses an agent to treat overdoses, or an individual who administers the agent to another person. This act becomes effective December 1, 2013, and applies to persons seeking medical assistance, or those dispensing or administering an opioid antagonist on or after that date.***

BILL ANALYSIS:

Section 1 of the act provides that a person seeking medical assistance for themselves for a "drug-related overdose" (defined term in the act), or a person who seeks medical assistance for another individual who is experiencing a drug-related overdose, has immunity from prosecution for any of the following offenses:

- Misdemeanor possession of a controlled substance.
- Felony possession of less than one gram of cocaine..
- Felony possession of less than one gram of heroin.
- Misdemeanor possession of drug paraphernalia.

Any evidence obtained in connection with an investigation of other crimes committed by a person who may be entitled to limited immunity under the act remains admissible as to those crimes..

Section 2 provides there is no civil or criminal liability for the following:

- A practitioner who prescribes, dispenses, or distributes naloxone hydrochloride, an opioid antagonist approved by the Food and Drug Administration for the treatment of a drug overdose, to (i) a person at risk of experiencing an opiate-related overdose, or (ii) to another person in a position to assist an at risk person.
- A person who received an opioid antagonist, and administers it to another person if they have a good faith belief the person is experiencing a drug-related overdose, and the person exercises reasonable care in administering the agent.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to persons seeking medical assistance, or those dispensing or administering an opioid antagonist on or after that date.

Statutes That Provide For Limited Immunity From Prosecution in Medical Emergencies Involving Drug Overdose

Cal. [Health & Safety] Code § 11376.5 – Possession for personal use or being under the influence of controlled substances is not a crime for a person who in good faith seeks medical assistance for another person experiencing a drug-related overdose that is related to possession of controlled substances.

Colo. Rev. Stat. § 18-1-711- A person shall be immune from criminal prosecution for crimes listed in § 18-1-711 (3) if the person(1) reported in good faith an emergency drug or alcohol overdose to law enforcement, 911 or medical personnel; (2) the person remained on scene until medical and law enforcement personnel arrived on scene; (3) the person identifies themselves to and cooperates with law enforcement and medical personnel; and (4) the offenses arises from the same course of events that the emergency did. If immunity is obtained it extends to cover the person who suffered the emergency event. Nothing in this section prevents prosecution for an offense not listed in section (3) or restricts use of evidence from the event to prosecute another unlisted offense.

Conn. Gen. Stat. § 21a-267 – Use, possession, or delivery of drug paraphernalia sections of the law do not apply when evidence used for the charges results from a person who in good faith sought medical assistance for another person, and reasonably believed that person was experiencing an overdose of any drug or substance. These sections also do not apply to the person for whom help was being called or to a person who seeks help for themselves under the same circumstances. "Good faith" does not include seeking medical attention during the course of the execution of an arrest or search warrant.

Conn. Gen. Stat. § 21a-279 – Illegal possession sections of the law do not apply when evidence used for the charges results from a person who in good faith sought medical assistance for another person, and reasonably believed that person was experiencing an overdose of any drug or substance. These sections also do not apply to the person for whom help was being called or to a person who seeks help for themselves under the same circumstances. "Good faith" does not include seeking medical attention during the course of the execution of an arrest or search warrant.

Fla. Stat. §893.21 – A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized pursuant to possession laws if the evidence for the charges was obtained as a result of seeking medical assistance. The person in need of assistance cannot similarly be charged. Immunity provided by this section is not grounds for suppression of evidence in other criminal proceedings.

Ill. Rev. Stat. Ch. 720 § 646/115 - A person who, in good faith, seeks emergency medical assistance for someone experiencing an overdose shall not be charged or prosecuted for Class 3 felony possession of methamphetamine if evidence for the Class 3 felony possession charge was acquired as a result of the person seeking or obtaining emergency medical assistance and providing the amount of substance recovered is less than one gram of methamphetamine or a substance containing methamphetamine. The person experiencing the overdose shall similarly not be charged. Overdose means a methamphetamine-induced physiological event that results in a life-threatening emergency to the individual who ingested, inhaled, injected or otherwise bodily absorbed methamphetamine. This limited immunity shall not be extended if law enforcement has reasonable suspicion or probable cause to detain, arrest, or search the person and the reasonable suspicion or probable cause is based on information obtained prior to or independent of the individual taking action to seek or obtain emergency medical assistance and not obtained as a direct result of the action of seeking or obtaining emergency medical assistance. Nothing in this Section is intended to interfere with or prevent the investigation, arrest, or prosecution of any

on for the delivery or distribution of cannabis, methamphetamine or other controlled substances, drug-induced ...cide, or any other crime.

Mass. Gen. Laws. Ann. Ch 192 § 34A – A person who, in good faith seeks medical assistance for someone experiencing a drug related overdose shall not be charged or prosecuted for possession of a controlled substance if the evidence for the charge was gained as a result of seeking medical attention. The person experiencing the overdose and receiving medical attention is similarly immune. Does not provide immunity for trafficking, distribution or possession with intent to distribute.

N.M. Stat. Ann. § 30-31-27.1(A)-(B) – A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance if the evidence for the charge was gained as a result of seeking out medical assistance. Immunity from possession is similarly extended to the person experiencing the overdose.

N.Y. [Penal] Law § 220.78 – A person who, in good faith, seeks health care for someone experiencing a drug or alcohol overdose or other life threatening medical emergency shall not be charged or prosecuted for a controlled substance offense other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years, or for possession of drug paraphernalia, with respect to any controlled substance, marihuana, alcohol or paraphernalia that was obtained as a result of such seeking or receiving of health care. The person experiencing the overdoes is similarly immune. An affirmative defense is created to criminal sale of a controlled substance and criminal sale of marihuana, with respect to any controlled substance or marihuana that was obtained as a result of seeking or receiving health care, provided that the defendant, in good faith, seeks health care for themselves or one else who is experiencing an overdose or life threatening medical emergency and the defendant has no prior convictions for commission or attempted commission of a class A-I, A-II or B felony. Nothing in this section can be construed to bar the admissibility of any evidence in connection with the investigation and prosecution of a crime with regard to another defendant who does not independently qualify for the bar to prosecution or for the affirmative defense; nor with regard to other crimes committed by a person who otherwise qualifies under this section; nor shall anything in this section be construed to bar any seizure pursuant to law. Immunity and the affirmative defense does not apply to prosecution for a class A-I felony.

R.I. Gen. Laws § 21-28.8-4(A)-(B) – Any person who, in good faith and without malice and in the absence of evidence of an intent to defraud, seeks medical assistance for someone experiencing a drug overdose or other drug-related medical emergency shall not be charged or prosecuted for any crime except ones involving manufacture or possession with intent to manufacture a controlled substance or possession with intent to deliver a controlled substance, if the evidence for the charge was gained as a result of seeking medical help. The person experiencing the overdose is similarly immune.

Wash. Rev. Code § 69.50.315 – A person acting in good faith who seeks medical help for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to 69.50.4013 or penalized under 69.50.4014, if the evidence of the charge was obtained as a result of seeking medical help. The person experiencing the overdose is similarly immune. This section shall not be grounds for suppression of evidence in other criminal charges.

Statutes that Provide Immunity for Prescribing/Administering Naloxone or Other Opioid Antagonist

California – Cal. Civ. Code § 1714.22

Connecticut – C.G.S.A. § 17a-714a

A licensed health care professional who is permitted by law to prescribe an opioid antagonist may, if acting with reasonable care, prescribe, dispense or administer an opioid antagonist to a drug user in need of such intervention without being liable for damages to such person in a civil action or subject to criminal prosecution. For purposes of this section, "opioid antagonist" means naloxone hydrochloride or any other similarly acting and equally safe drug approved by the federal Food and Drug Administration for the treatment of drug overdose.

New Mexico – N.M.S.A. § 24-23-1, § 24-23-2 Establishes a program directed at first responders for the administration of the opioid antagonist

Rhode Island – Gen. Laws § 21-28.8-3 Similar to S20 (person administering opioid antagonist acts in good faith and with reasonable care has immunity from civil or criminal prosecution).

New York – Public Health Law § 3309 (equates the administration of opioid antagonist to "first aid" for emergencies, with respect to liability)(possession, acquisition, or use does not constitute unlawful practice of a profession)

Washington – RCWA 69.50.315, 18.130.345

69.50.315 Medical assistance - Drug-related overdose - Naloxone - Prosecution for possession.

(1) (a) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to RCW 69.50.4013, or penalized under RCW 69.50.4014, if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance.

(b) A person acting in good faith may receive a naloxone prescription, possess naloxone, and administer naloxone to an individual suffering from an apparent opiate-related overdose.

(2) A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to RCW 69.50.4013, or penalized under RCW 69.50.4014, if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.

(3) The protection in this section from prosecution for possession crimes under RCW 69.50.4013 shall not be grounds for suppression of evidence in other criminal charges.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 91
PROPOSED COMMITTEE SUBSTITUTE S91-CSRV-4 [v.4]

2/27/2013 10:13:50 PM

Short Title: Prohibit Expunction Inquiry. (Public)

Sponsors:

Referred to:

February 18, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW PERTAINING TO ADMINISTRATIVE ACTION THAT MAY BE TAKEN BY AN OCCUPATIONAL LICENSING BOARD AS A RESULT OF EXPUNGED CHARGES OR CONVICTIONS UNDER G.S. 15A-145.4 AND G.S. 15A-145.5; AND TO PROHIBIT AN EMPLOYER, EDUCATIONAL INSTITUTION, OR STATE OR LOCAL GOVERNMENT AGENCY FROM REQUESTING THAT AN APPLICANT PROVIDE INFORMATION REGARDING AN ARREST, CRIMINAL CHARGE, OR CRIMINAL CONVICTION OF THE APPLICANT THAT HAS BEEN EXPUNGED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145.4(h) reads as rewritten:

(h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also ~~reverse~~ vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. 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.

SECTION 2. G.S. 15A-145.5(f) reads as rewritten:

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also ~~reverse~~ vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. 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 or to fingerprint records.

SECTION 3. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-153. Effect of expunction; prohibited practices by employers, educational institutions, agencies of State and local governments.**

(a) Purpose. – The purpose of this section is to clear the public record of any entry of any arrest, criminal charge, or criminal conviction that has been expunged so that (i) the person who is entitled to and obtains the expunction may omit reference to the charges or convictions to potential employers and others and (ii) a records check for prior arrests and convictions will not disclose the expunged entries. Nothing in this section shall be construed to prohibit an employer from asking a job applicant about criminal charges or convictions that have not been expunged and are part of the public record.

(b) No person as to whom an order of expunction has been entered pursuant to this Article 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 any expunged arrest, apprehension, charge, indictment, information, trial, or conviction in response to any inquiry made of him or her for any purpose other than as provided in subsection (e) of this section.

(c) Prohibit Employer or Educational Institution From Requiring Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests, charges, or convictions that have been expunged. This subsection does not apply to State or local law enforcement agencies authorized pursuant to G.S. 15A-151 to obtain confidential information for employment purposes.

(d) Prohibit State or Local Government Agencies, Officials, and Employees From Requiring Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – Agencies, officials, and employees of the State and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges or convictions that have been expunged. Such application shall not be denied solely because of the applicant's refusal or failure to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

(e) The provisions of subsection (d) of this section do not apply to any applicant or licensee seeking or holding any certification issued by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to Chapter 17C of the General Statutes or the North Carolina Sheriffs Education and Training Standards Commission pursuant to Chapter 17E of the General Statutes.

(1) Convictions expunged pursuant to G.S. 15A-145.4 -- Persons pursuing certification under the provisions of Chapter 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 pursuant to the provisions of G.S. 15A-145.4.

(2) Convictions expunged pursuant to G.S. 15A-145.5 -- Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes shall disclose any and all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of G.S. 15A-145.5.

(f) Penalty for violation. – Upon investigation by the Commissioner of Labor or the Commissioner's authorized representative, any employer found to be in violation of subsection (c) of this section shall be subject to a civil penalty of up to five hundred fifty dollars ($500.00)

for each violation. In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations. The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act. The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for carrying out the provisions of this subsection.

Nothing in this section shall be construed to create a private cause of action against any employer or its agents or employees, any educational institutions or their agents or employees, or any State or local government agencies, officials, or employees."

SECTION 14. Sections 1 and 2 of this act are effective when this act becomes law. The remainder of this act becomes effective December 1, 2013. G.S. 15A-153(f), as enacted by Section 13 of this act, applies only to violations of G.S. 15A-153 that occur on or after December 1, 2013.

SENATE BILL 91:
Prohibit Expunction Inquiry

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 27, 2013
Introduced by:	Sens. Daniel, Goolsby, Kinnaird	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition S91-CSRV-4		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 91 would prohibit employers, educational institutions, and State or local government agencies, officials, and employees from requiring applicants to disclose information concerning any arrests, criminal charges, or criminal convictions that have been expunged. The Commissioner of Labor would be authorized to assess a civil penalty of $500 against employers who violate provisions of the bill. In addition, the bill would provide for administrative action taken by a State or local government agency as a result of a person having been charged or convicted of a crime to be vacated, rather than reversed, when the record of that person's conviction is expunged.***

CURRENT LAW: In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Provisions for the expunction of criminal records are set out in Article 5, Chapter 15A of the General Statutes. Expunction is the process by which a record of criminal conviction is removed by order of the court. A chart attached to this summary provides general information about the circumstances under which expunction may be granted.

When expunction is granted the person whose record is expunged may generally treat the event as if it never occurred, and the person would not be guilty of perjury or making a false statement for failure to acknowledge or reveal information about the expunged criminal record in response to any inquiry. However, when pursuing certification as a law enforcement officer, a person whose record has been expunged pursuant to G.S. 15A-145.4 (under age 18 at the time of commission of a nonviolent felony) must disclose any and all felony convictions even if the felony convictions were expunged; a similar provision requires disclosure of any convictions by an applicant whose conviction record has been expunged pursuant to G.S. 15A-145.5 (expunction of certain misdemeanors and felonies; no age limitation).

Pursuant to G.S. 15A-151 the Administrative Office of the Courts maintains a confidential file containing the names of people who have been granted an expunction. The information may be disclosed to a judge for the purpose of ascertaining whether a person charged with an offense has previously been granted an expunction. Expunction information may also be disclosed to State and local law enforcement agencies for employment purposes and to the North Carolina Criminal Justice Education and Training and Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes. The two Commissions have the statutory authority to deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that felony conviction has been expunged.

BILL ANALYSIS: ***Sections 1 and 2*** of the bill provide for administrative action taken against a person by a State or local government agency as a result of the person having been charged or convicted of a crime to be vacated, rather than reversed, when the record of that person's conviction is expunged pursuant to G.S. 15A-145.4 or 15A-145.5. If the agency is an occupational licensing board, the person

may then reapply for licensure and must satisfy current licensing requirements. ***Section 3*** of the bill would provide that certain applicants need not include a reference to or information concerning arrests, charges or convictions that have been expunged when responding to questions concerning any arrest or criminal charge that has not resulted in a conviction. The bill would:

- Prohibit an employer or educational institution from requiring an applicant for employment or admission to disclose information concerning any arrests, criminal charges, or criminal convictions that have been expunged. This would not apply to State or local law enforcement agencies that are authorized by statute to access confidential files for employment purposes.
- Prohibit State or local government agencies, officials, and employees from requiring an applicant for a license, permit, registration or governmental service to disclose information concerning any arrest, criminal charge, or criminal conviction that has been expunged. Such applications could not be denied solely because of the applicant's refusal or failure to disclose information concerned the expunged information. This would not apply to any applicant or licensee seeking or holding any certification issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs Education and Training Standards Commission.

Violations by an employer would be subject to imposition of a civil penalty by the Commissioner of Labor, in an amount up to $500 for each violation. The proposed committee substitute makes it clear that the provisions of the bill do not prohibit an employer from asking an applicant about criminal charges or convictions that have not been expunged and that are part of the public record. It also specifies that the bill does not create a private cause of action against an employer, educational institution, or State or local government agency.

EFFECTIVE DATE: Section 1 and 2 of the bill would be effective when the bill becomes law. The remaining provisions of the bill would become effective December 1, 2013 and the penalty would apply to violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 33*
PROPOSED COMMITTEE SUBSTITUTE S33-CSRK-6 [v.1]
2/22/2013 1:37:03 PM

Short Title: Use of Criminal History Records by Lic. Bds. (Public)

Sponsors:

Referred to:

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT OCCUPATIONAL LICENSING BOARDS CONSIDER CERTAIN FACTORS BEFORE DENYING LICENSES TO APPLICANTS WITH CRIMINAL RECORDS, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-8.1. Use of criminal history records.**

(a) The following definitions apply in this section:

(1) Applicant. – A person who makes application for licensure from an occupational licensing board.

(2) Board. – An occupational licensing board as defined in G.S. 93B-1.

(3) Criminal history record. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or a licensee's fitness to be licensed or disciplined.

(4) Licensee. – A person who has obtained a license to engage in or represent himself or herself to be a member of a particular profession or occupation.

(b) Unless the law governing a particular occupational licensing board provides otherwise, a board shall not automatically deny licensure on the basis of an applicant's criminal history. If the board is authorized to deny a license to an applicant on the basis of conviction of any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's verified criminal history record reveals one or more convictions of any crime, the board may deny the license if it finds that denial is warranted after consideration of the following factors:

(1) The level and seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the crime.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.

(6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.

(7) The subsequent commission of a crime by the applicant.

(c) The board may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.

(d) This section does not apply to The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission."

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

SENATE BILL 33:
Use of Criminal History Records by Lic. Bds

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 27, 2013
Introduced by:	Sen. Hartsell	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S33-CSRK-6		Committee Counsel

SUMMARY: ***This act provides that if an applicant with a criminal record applies for an occupational license, and the law does not provide that a criminal conviction is an automatic disqualifier, the occupational licensing board must consider certain factors in making a licensing determination. This act is effective when it becomes law.***

[As introduced, this bill was identical to H167, which has not been referred to a House Committee.]

CURRENT LAW: "Occupational licensing board" means any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; "occupational licensing board" does not include State agencies, staffed by full time State employees, which as a part of their regular functions may issue licenses. G.S. 93B-1.

Example of automatic disqualification: By law, a person convicted of child abuse crimes cannot be a licensed day care provider. Any other criminal history is reviewable by the licensing board in making a determination.

BILL ANALYSIS:

- This act provides that unless a law states that an applicant is disqualified from an occupation due to a criminal conviction, then a licensing board may not automatically disqualify the applicant based on a criminal conviction.
- If a licensing board is "authorized" to deny a license based upon a conviction for a crime involving fraud or moral turpitude, the board must consider the following factors before taking action on the application:
    - The level and seriousness of the crime.
    - The date of the crime.
    - The age of the person at the time of the crime.
    - The circumstances surrounding the commission of the crime, if known.
    - The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.
    - The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
    - The subsequent commission of a crime by the applicant.

(over)

- A board may deny a license to an applicant who refuses to consent to a criminal history check or use of fingerprints or other identifying information.
- This act does not apply to the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission. Current law authorizes each of these commissions to deny, suspend, or revoke a certification based upon a felony conviction.

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

S33-SMRK-14(CSRK-6)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 2/28/13

S. B. No. 33 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) McKissick

1 moves to amend the bill on page 1 between lines 33 and 34
2 ( ) WHICH CHANGES THE TITLE
3 by inserting the following
4
5
6 "(8) Any affidavits or other written
7 documents, including character
8 references."
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 2-28 TIME: 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Conor Applegate	Mooresville	David Curtis
2 ~~Danielle Jones~~	Clinton	Berger
3 ~~Emily Edwards~~	Clinton	Berger
4		
5		
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7		
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9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 02/28/2013 ROOM: 1124

1. ROBERT YOUNG
2. CANTON LEWIS
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 28, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
William Zule	North Carolina Harm Reduction Coalition
Tessie Castillo	NC Harm Reduction Coalition
Jessica Eaddy	Governor's Institute
[signature]	NCRMA
Kay Parker	NASW-NC
[signature]	NCJC54

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 28, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Haigwood	NCDOL
Jane Gilchrist	NCDOL
Patrick Brown	NC BDP
Claire Anderson	NCBOP
Elizabeth Suttles	NCMB
Janet Thoren	NCREC
Anne Lambuth	Southlight Addictions Services
Robert Childs	NC Harm Reduction Coalition
Deanne Gleaves	Pitt County
Lawrence Eisenberg	Citizen
Kay Emanuel	School of Government

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 28, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Erica Nelson	NCHA
David Crawford	AIA NC
Rob Schofield	NC FW
Mildred Spearman	NCAOC
W A Potter Jr	NCDS & NCPHA
Kim Crouch	NCBA
Jake Cashion	NC Chamber
John McMillan	NFIB
Johanna Field	NAIOP-NC

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 28, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Angela Hight	Civitas
FRED WELLS BRASON II	PROJECT LAZARUS
ANDY LITTLE	RAINBOW COMMUNITY CARES
Elizabeth Hodges	CFTF
James Sizemore	Catalyst Community Church
Mike Rose	Catalyst Community Church
David McGowan	NCAR
Bill Rowe	NCJ Nature Conte
Lars Rubert	CJPC
Whitney Christensen	NCRIA
Will Grathan	MWC

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

February 28, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chip Boggs	NCMS
Ha Nguyen	NCCCR
Colleen Haller	NC HRC
Betty Rupp	NCHRC
Leilani Attilio	NCHRC
Lofton Wilson	NCHRC
Frank Walsh	East Seals UCP
Ken Mann	Brandon
Paul Meyer	NCLM
Michelle Frazier	MF+S
John Hardin	MF+S

Senate Committee on Judiciary II
Thursday, March 7, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages and Sgt.-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 123	Clarify Sex Offender Residence Law.	Senator Meredith

Adjournment

Senate Judiciary II Committee
Thursday, March 7, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, March 7, 2013 in room 1124 of the Legislative Building. Sarah Wilson and Andrew Smith of Greensboro; and Abby Jones of Boiling Springs Lake served as pages. Senator Daniel presided as chair.

S.B. 123 – Clarify Sex Offender Residence Law

Senator Meredith and Hal Pell, a Staff Attorney with the Research Division, were recognized to explain the bill. It would codify a provision in S.L. 2006-247 that prohibits a registered sex offender from residing at a location within 1,000 feet of a school or day care center unless the registered sex offender had established residency at that location prior to August 16, 2006. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 10:16 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	March 7, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 123	Clarify Sex Offender Residence Law.	Senator Meredith

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, March 07, 2013

Senator Daniel,
submits the following with recommendations as to passage:

FAVORABLE

SB **123** Clarify Sex Offender Residence Law.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Wesley Meredith will handle SB 123

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 123

Short Title:	Clarify Sex Offender Residence Law.	(Public)
Sponsors:	Senators Meredith (Primary Sponsor); Cook, J. Davis, Pate, Rabin, and Sanderson.	
Referred to:	Judiciary II.	

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE EXISTING LAW PERTAINING TO SEX OFFENDERS RESIDING NEAR SCHOOLS OR DAY CARE CENTERS.

Whereas, in 2006, the General Assembly enacted restrictions on registered sex offenders residing near schools and day care centers; and

Whereas, the law provided that the residential restrictions did not apply to *a person who has established a residence in accordance with the law prior to the effective date of the law* [August 16, 2006]; and

Whereas, the application portion of the law was in the session law, but not codified as part of the statute; and

Whereas, law enforcement officials mistakenly believe, based only upon the codified portion of the law which provides the conditions upon which a residence is established and not the effective date of the residency, that a registered sex offender can legally reside within 1,000 feet of a school or day care center if the offender moves in with a family member who had established residence at the location prior to the effective date of the law, even though the offender did not establish residence at that location prior to August 16, 2006; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.16(a) reads as rewritten:

"(a) A registrant under this Article shall not knowingly reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located. This subsection applies to any registrant who did not establish his or her residence, in accordance with subsection (d) of this section, prior to August 16, 2006."

SECTION 2. Section 11(c) of S.L. 2006-247 reads as rewritten:

"**SECTION 11.(c)** Subsection (a) of this section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date. Subsection (a) of this section does not apply to a person who has established a residence prior to ~~the effective date of this subsection~~ August 16, 2006, in accordance with the provisions in G.S. 14-208.16(d)(1), (2), or (3) as enacted by this act. This subsection is effective ~~when this act becomes law.~~ on August 16, 2006. The remainder of this section is effective on December 1, 2006, and applies to offenses committed on or after that date."

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

SENATE BILL 123:
Clarify Sex Offender Residence Law

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 5, 2013
Introduced by:	Sen. Meredith	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act codifies a provision in S.L. 2006-247 that prohibits a registered sex offender from residing at a location within 1,000 feet of a school or day care center unless the registered sex offender had established residency at that location prior to August 16, 2006.***

CURRENT LAW: It is unlawful for a registered sex offender to live within 1,000 feet of a school or day care center, unless the registrant established residency at that location prior to August 16, 2006. A violation of this law is a Class G felony.

It is not unlawful for a registered sex offender to remain at his or her residence if a school or day care center is established within 1,000 feet of that residence after the registrant had established residency.

BILL ANALYSIS:

Section 11(c) of S.L. 2006-247, which was not codified, provided that the portion of the act that prohibited a registered sex offender from living within 1,000 feet from a school or day care center did not apply to a registrant who had established their residency prior to the act's effective date [August 16, 2006]. The act codifies the language in the Session Law that provided that the registrant had to establish residency prior to the effective date of the law in order to live within 1,000 feet of a school or day care center.

Note: Section 11 of S.L. 2006-247 is reprinted on the reverse side of this summary.

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

Session Law 2006-247 Section 11

SECTION 11.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.16. Residential restrictions.**

(a) A registrant under this Article shall not knowingly reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located.

(b) As used in this section, 'school' does not include home schools as defined in G.S. 115C-563 or institutions of higher education, and the term 'child care center' is defined by G.S. 110-86(3). The term 'registrant' means a person who is registered, or is required to register, under this Article.

(c) This section does not apply to child care centers that are located on or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

(d) Changes in the ownership of or use of property within 1,000 feet of a registrant's registered address that occur after a registrant establishes residency at the registered address shall not form the basis for finding that an offender is in violation of this section. For purposes of this subsection, 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 of the registrant.

(e) Nothing in this section shall be construed as creating a private cause of action against a real estate agent or landlord for any act or omission arising out of the residential restriction in this section.

(f) A violation of this section is a Class G felony."

SECTION 11.(b) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.17. Sexual predator prohibited from working or volunteering for child-involved activities; limitation on residential use.**

(a) It shall be unlawful for any person required to register under this Article to work for any person or as a sole proprietor, with or without compensation, at any place where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors.

(b) It shall be unlawful for any person to conduct any activity at his or her residence where the person:

(1) Accepts a minor or minors into his or her care or custody from another, and

(2) Knows that a person who resides at that same location is required to register under this Article.

(c) A violation of this section is a Class F felony."

SECTION 11.(c) Subsection (a) of this section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date. Subsection (a) of this section does not apply to a person who has established a residence prior to the effective date of this subsection in accordance with the provisions in G.S. 14-208.16(d)(1), (2), or (3) as enacted by this act. This subsection is effective when this act becomes law. The remainder of this section is effective on December 1, 2006, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

March 7, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Adam Pridemore	NCASA
David McGowan	NCAR
Mildred Spearman	NCAOC

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

March 7, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kay Emanuel	UNC School of Government

Senate Committee on Judiciary II
Tuesday, March 12, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages and Sgt.-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 117	Lily's Law.	Senator Gunn Senator Daniel Senator Randleman

Adjournment

Senate Judiciary II Committee
Tuesday, March 12, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, March 12, 2013 in room 1027 of the Legislative Building. Sarah Wilson and Andrew Smith of Greensboro; and Abby Jones of Boiling Springs Lake served as pages. Senator Allran presided as chair.

S.B. 117 – Lily's Law

Senator Gunn was recognized to explain the bill, which he said codifies the common law and provided a brief background on Lily, a child from Mebane. Senator Randleman moved to adopt the proposed committee substitute for discussion and the motion carried. The PCS would codify the common law that it is murder if a child is born alive and then dies due to injuries inflicted prior to the child being born alive. Senator Cook asked for an explanation of codifying which Hal Pell, a staff attorney with the Research Division, provided. Senator Bingham moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 10:22 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, March 12, 2013

Senator Allran,
submits the following with recommendations as to passage:

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

SB **117** Lilys Law.

Draft Number:	S117-PCS15107-RK-9
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Richard Gunn will handle SB 117

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 117
Corrected Copy 3/1/13
PROPOSED COMMITTEE SUBSTITUTE S117-CSRK-9 [v.2]
3/8/2013 9:39:29 AM

Short Title: Lily's Law. (Public)

Sponsors:

Referred to:

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO CODIFY THE COMMON LAW THAT IT IS MURDER WHERE A CHILD WHO IS BORN ALIVE DIES AS THE RESULT OF INJURIES INFLICTED PRIOR TO THE CHILD'S BIRTH, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "LILY'S LAW."

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as "Lily's Law."

SECTION 2. G.S. 14-17 reads as rewritten:

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

(a) 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 18 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole.

(b) A murder other than described in subsection (a) of this section or in G.S. 14-23.2 shall be deemed second degree murder. Any person who commits second degree murder shall be punished as a Class B1 felon, except that a person who commits second degree murder shall be punished as a Class B2 felon in either of the following circumstances:

(1) The malice necessary to prove second degree murder is based on an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief.

(2) The murder is one that was 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, and the ingestion of such substance caused the death of the user.

(c) For the purposes of this section, it shall constitute murder where a child is born alive but dies as a result of injuries inflicted prior to the child being born alive. The degree of murder shall be determined as described in subsections (a) and (b) of this section."

SECTION 3. This act becomes effective December 1, 2013, 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 common law and statutes that would be applicable but for this act remain applicable to those prosecutions. The statutes, including Article 6A of Chapter 14 of the General Statutes, and the common law shall remain applicable to offenses not described in this act, whether the offense is charged due to a child being born alive and who dies or who is born alive with injuries, resulting from injuries inflicted prior to being born alive.

SENATE BILL 117:
Lily's Law

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 11, 2013
Introduced by:	Sens. Gunn, Daniel, Randleman	**Prepared by:**	Hal Pell
Analysis of:	PCS to Second Edition S117-CSRK-9		Committee Counsel

SUMMARY: ***This act codifies the common law that it is murder if a child is born alive and then dies due to injuries inflicted prior to the child being born alive. The act becomes effective December 1, 2013, and applies to offenses committed on or after that date; it does not affect any cases based upon offenses occurring before the effective date.***

CURRENT LAW: Under the common law, a person commits murder if a child is born alive and then dies due to injuries inflicted prior to being born alive—assuming all the elements relating to a murder charge are proven beyond a reasonable doubt.

BILL ANALYSIS: The act codifies the common law rule that if a child is born alive, but dies of injuries inflicted prior to being born alive, it is murder under our first degree murder statute. Absent a showing of the elements required for a first degree murder conviction, the act allows for a second degree murder conviction if the evidence shows the necessary malice on the part of the perpetrator.

EFFECTIVE DATE:

- This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.
- Prosecutions for offenses committed before the effective date of this act are not affected by the act.
- All statutes, including those in the Unborn Victims of Violence Act, and the common law remain applicable to any offense not described in the act.

BACKGROUND: In State v. Broom, a January 2013 case decided by the N.C. Court of Appeals, the court held that the common law provided that it is first degree murder if a child is born alive and dies of injuries inflicted prior to being born alive. The defendant, Robert Broom, had shot his wife who was 27 weeks pregnant, in the abdomen. The child, Lily Grace Broom, was delivered by caesarian section on October 7, 2008. She was on a ventilator for four days, but was taken off the ventilator, opened her eyes, moved her limbs, and began gaining weight. However, Lily developed necrotizing enterocolitis (NEC), a condition resulting from the gunshot wound. She was placed on a respirator, but doctors could do nothing for her and she died on November 4, 2008.

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 3-12 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Sarah Wilson	Greensboro	Wade
2 Andrew Smith	"	Robinson
3 Abby Jones	Boiling Springs Lake	Kinnaird
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Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

March 12, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Will Grantham	MWC
Chassidy Hinton	Intern – Senator McGraham
Jen Ryall	NC Family Policy Council
Barbara Hurst	NCRTL
Colleen Kochanek	NCCADV

Senate Committee on Judiciary II
Tuesday, March 26, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 292	Immediate License Revocation for Refusal.	Sen. Brunstetter Sen. Rabon
SB 316	Pretrial Release/Rebuttable Presumption.	Sen. McKissick Sen. Woodard
SB 368	Inmates Prescriptions/Pistol Permits.	Sen. Bingham
SB 369	Name Change Requirements for Minors.	Sen. Bingham

Adjournment

Senate Judiciary II Committee
Tuesday, March 26, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, March 26, 2013 in room 1027 of the Legislative Building. Jacalyn Grilli of Marshville, Rebecca Chisholm of Jacksonville, Timothy Jordan of Winston-Salem, Matt Taylor of Wilson and Katie Honaker of Raleigh served as pages. Senator Allran presided as chair.

S.B. 292 – Immediate License Revocation for Refusal

Senator Rabon was recognized to explain the bill, which would amend the statutes to provide that upon a person's receipt of a notice of revocation of their driver's license, a request for a hearing would not stay the revocation period under certain circumstances. Lori Kroll, Senator Brunstetter's general counsel, was recognized to further explain the bill and answer questions. Lauren Freeman, NC Clerk of Courts, was recognized to clarify hearing information and expressed interested in participating in any subcommittee. Senator Allran appointed a subcommittee to clarify the bill's language. The following members were appointed: Senator Daniel – Chair, Senator McKissick, Senator Kinnaird, Senator Bingham, and Senator Randleman. A copy of the bill and the summary is attached.

S.B. 316 – Pretrial Release/Rebuttable Presumption

Senator McKissick was recognized to explain the bill. It would create a rebuttable presumption that, under certain circumstances, no condition of pretrial release would reasonably assure the presence at trial of a defendant who has been arrested for an offense involving the illegal use, possession, or discharge of a firearm. Senator Daniel was recognized to offer an amendment which would index for inflation the memo amount of a bond, as suggested by the NC Sheriff's Association. Senator Bingham moved to adopt the amendment and the motion carried. Patrick Baker, the Durham City Attorney, was recognized to answer questions. Senator Bingham moved for a favorable report and the motion carried. A copy of the bill, the summary, and the amendment is attached.

S.B. 368 – Inmates Prescriptions/Pistol Permits

Senator Bingham was recognized to explain the bill. It would require prisoners in local confinement facilities to pay a fee of no more than $10 for a 30-day supply or less of a prescription drug. The bill would also change the procedure for paying the fee for a pistol purchase permit. Greg Stahl, representing the NC Sheriff's Association, was recognized to further explain the bill. Senator Randleman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 369 – Name Change Requirements for Minors

Due to time limitations, this bill was pulled from the agenda.

The meeting adjourned at 10:51 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 26, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 292	Immediate License Revocation for Refusal.	Senator Brunstetter Senator Rabon
SB 316	Pretrial Release/Rebuttable Presumption.	Senator McKissick Senator Woodard
SB 368	Inmates Prescriptions/Pistol Permits.	Senator Bingham
SB 369	Name Change Requirements for Minors.	Senator Bingham

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, March 26, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

SB **368** Inmates Prescriptions/Pistol Permits.

Draft Number:	None
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Stan Bingham will handle SB 368

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, March 28, 2013

Senator Allran,
submits the following with recommendations as to passage:

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

SB **316** Pretrial Release/Rebuttable Presumption.

Draft Number:	S316-PCS35220-RK-16
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Floyd McKissick will handle SB 316

All

adjourned

Senate JII Agenda
Tuesday, March 26, 2013

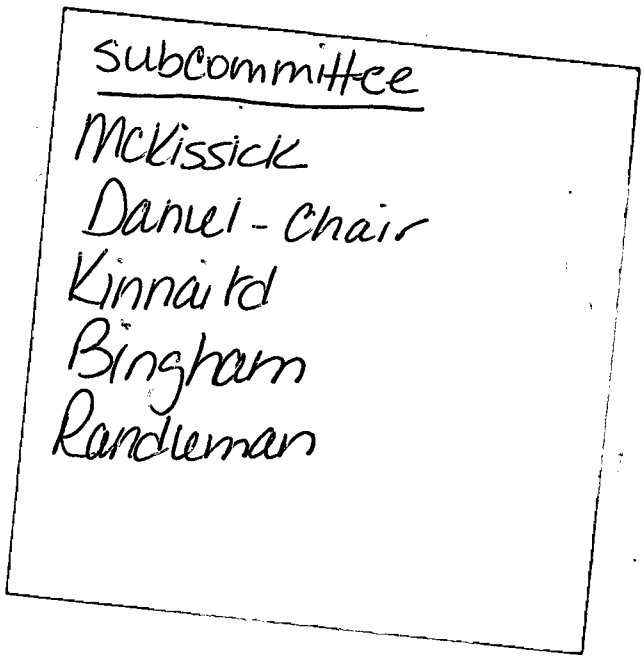
Welcome

1. **Introduction of Pages and Sgt.-at-Arms**

	Bill #	Short Title	Sponsor	Materials	Staff	Comments
			Local Bills			
			Public Bills			
1	S292	Immediate License Revocation for Refusal	Rabon ~~Brunstetter~~		Hal	Hal rec'd to answer ?'s Bingham moved FAV Laurie Kroll, staff, rec'd to further explain sent to subcommittee
2	S316	Pretrial Release/Rebuttable Presumption	McKissick		Hal	amendment HOLD → FAV
3	S368	Inmates Prescriptions/ Pistol Permits	Bingham		Hal	Grey Stahl, Sheriff's Assn., rec'd to further explain. Hal rec'd to ans ?'s Randleman moves FAV
	S369	Name Change Requirements for Minors	Bingham	PCS	Brenda	

1. Lauren Freeman, NC Clerk of Courts, rec'd. - wants to offer clarification about hearing & interested in participating in any subcommittee that clarifies the language.

2. Sen. Daniel moves to amend - rec'd to explain amend which indexes for inflation the memo amount of a bond as suggested by the Sheriff's assn. Hal rec'd to further explain substantive changes. Bingham moves to adopt amend w/ second from Cook - motion carried Bingham moved for FAV ~~as amended~~. rolling into new PCS Patrick Baker, Durham City Atty, rec'd to answer ?'s


subcommittee
McKissick
Daniel - Chair
Kinnaird
Bingham
Randleman

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 292

Short Title:	Immediate License Revocation for Refusal.	(Public)
Sponsors:	Senators Brunstetter, Rabon (Primary Sponsors); and Meredith.	
Referred to:	Judiciary II.	

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL IMMEDIATELY REVOKE A PERSON'S DRIVERS LICENSE FOR REFUSING TO SUBMIT TO A CHEMICAL ANALYSIS PURSUANT TO G.S. 20-16.2 REGARDLESS OF WHETHER THE PERSON REQUESTS A HEARING BEFORE THE DIVISION IF CERTAIN CONDITIONS ARE MET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.2(d) reads as rewritten:

"(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation ~~order unless, before the effective date of the order, the person requests in writing a hearing before the Division.~~order. The person may request in writing a hearing before the Division, but the request shall not stay the revocation of the person's license to drive if a judicial official or clerk pursuant to subsections (e) or (f) of G.S. 20-16.5 determines there is probable cause to believe that each of the conditions listed in subdivisions (1) through (3) and sub-subdivision (4)a. of subsection (b) of G.S. 20-16.5 has been met. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. ~~If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing.~~ The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing shall be conducted in the county where the charge was brought, and shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis.

If the Division finds that the conditions specified in this subsection are met, it shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. ~~If the revocation is sustained, the person shall surrender his or her license immediately upon notification by the Division.~~"

SECTION 2. This act becomes effective September 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 292:
Immediate License Revocation for Refusal

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 25, 2013
Introduced by:	Sens. Brunstetter, Rabon	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act amends the statutes to provide that upon a person's receipt of a notice of revocation of their driver's license, a request for a hearing does not stay the revocation period under certain circumstances.***

CURRENT LAW: There are two different revocation statutes dealing with a refusal to submit to an analysis. General Statute 20-16.2 is "administrative," in that it is processed through the Department of Motor Vehicles and is a 12 month revocation for refusal to submit to the analysis. General Statute 20-16.5 is deemed to be an "immediate" revocation [which it may or may not be], and is a "civil" proceeding through a judicial official or clerk of court, if filed with the clerk.

I. Administrative, 12 month revocation

General Statute 20-16.2 provides:

"**Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied consent offense.** Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied consent offense may obtain a chemical analysis of the person." [emphasis added]

The law provides that when a driver is suspected of an implied consent offense (one where a chemical analysis is required), and then refuses the chemical analysis, the law enforcement officer can provide an affidavit to the Department of Motor Vehicles that states any of the following:

- The person refused the analysis.
- The person took the analysis and had a reading of 0.15.
- The person's driver's license had an alcohol restriction and the results established a violation of that restriction.

Although the affidavit is stated to include a reading over 0.15, the specific statements of what should be included in the affidavit do not include a statement to that effect.

The law then provides that if an affidavit is submitted to the DMV as provided in the section, then the DMV will send a notice of revocation to the person that the driver's license is revoked for 12 months, effective on the 10th day after mailing. **However, if the person asks for a hearing, the revocation period is stayed.** According to the statute, the ultimate issue to be determined at the hearing is whether the person willfully refused to submit to an analysis. If the person had turned in the license prior to the hearing, they are credited with that time period; however, they are not credited with the time period provided in the civil revocation proceeding under G.S. 20-16.5.

II. Civil Proceeding, 30 or 45 day revocation period

There are four bases for revocation under this statute:

- Willful refusal of a chemical analysis
- Alcohol concentration of 0.08 or more (regular license)
- Alcohol concentration of 0.04 or more (commercial license)
- Any alcohol concentration, person is under 21 years of age

The law enforcement officer and chemical analyst execute a revocation report. If there has been a refusal and an affidavit completed under 20-16.2, then that affidavit may be used. If no revocation report has been filed, a judicial official conducting the initial appearance on the underlying criminal charge would review it with the person present. Upon finding probably cause as to the required elements (reasonable grounds that an implied consent defense committed; the statutory procedures were followed for notification and submission; and person falls into one of the four above categories), there is an "immediate" revocation of the license. The driver is required to turn over the license at that time, and it is revoked for 30 days.

If the revocation report if filed before the clerk, and the person is not present, then the clerk can find probable cause, and mail a revocation order to the person. The person can surrender the license to the clerk or demonstrate that he or she is not currently licensed. If the person does not respond within five working days of the effective date of the order, then a "pick-up" order is issued. The revocation is for 30 days from the surrender date, or 45 days is the license is surrendered more than five days after the effective date of the order, or is the result of a "pick-up" order.

BILL ANALYSIS:

The bill provides that if a person has their license administratively revoked under G.S. 20-16.2, the revocation period is not stayed by a request for a hearing if the person has had a civil proceeding under G.S. 20-16.5, and the judicial official or the clerk found that there was probable cause that the person had willfully refused to submit to a chemical analysis.

EFFECTIVE DATE: This act becomes effective September 1, 2013, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 316

Short Title:	Pretrial Release/Rebuttable Presumption.	(Public)
Sponsors:	Senators McKissick and Woodard (Primary Sponsors).	
Referred to:	Judiciary II.	

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A REBUTTABLE PRESUMPTION EXISTS IN CERTAIN CIRCUMSTANCES THAT A PERSON CHARGED WITH A FELONY OR CLASS A1 MISDEMEANOR OFFENSE INVOLVING THE ILLEGAL USE, POSSESSION, OR DISCHARGE OF A FIREARM SHOULD NOT BE RELEASED PRIOR TO TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. 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) 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. 14-50.16;

(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. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) 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 there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:

(1) The offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm.

(2) The person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.

(g) Persons who are considered for bond under the provisions of subsections ~~(d) and (e)~~(d), (e), and (f) 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 2. This act becomes effective December 1, 2013, and applies to proceedings to determine pretrial release conditions on or after that date.

SENATE BILL 316:
Pretrial Release/Rebuttable Presumption

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 25, 2013
Introduced by:	Sens. McKissick, Woodard	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act creates a rebuttable presumption that, under certain circumstances, no condition of pretrial release will reasonably assure the presence at trial of a defendant who has been arrested for an offense involving the illegal use, possession, or discharge of a fire arm. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.***

[As introduced, this bill was identical to H251, as introduced by Reps. Michaux, Faircloth, which is currently in House Judiciary, if favorable, Appropriations.]

BILL ANALYSIS: This act amends the statute which qualifies the right to pretrial release in capital and certain noncapital cases. The act provides that if a judicial official determines that there is reasonable cause to believe that a defendant committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm, then if the judicial finds that either:

(1) The offense was committed while the defendant was on pretrial release for a like offense; or

(2) The defendant was convicted of a like offense within the previous five years (or released from confinement for the offense, whichever is later), then

there is a rebuttable presumption that no condition of pretrial release that will assure the appearance of the person at trial, as well as the safety of the community.

A person considered under these provisions may only be released by a district or superior court judge upon a finding that (i) there is a reasonable assurance that the person will appear, and (ii) release prior to trial does not pose an unreasonable risk of harm to the community.

EFFECTIVE DATE: The act becomes effective December 1, 2013, and applies to proceedings to determine pretrial release conditions on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 316

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

S316-ARK-13 [v.3]

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

Date _____,2013

Senator Daniel

moves to amend the bill on page 1, line 5, by rewriting it to read:

"DISCHARGE OF A FIREARM SHOULD NOT BE RELEASED PRIOR TO TRIAL, AND TO AMEND CERTAIN BOND PROVISIONS." and,

On page 2, between lines 25 and 26, by inserting the following:

"**SECTION 2.** G.S. 15A-534 reads as rewritten:

". . .

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least ~~five hundred dollars ($500.00).~~ one thousand dollars ($1,000.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) . . .

(d3) When conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars ($1,000.00).

. . . .", and

By renumbering the succeeding sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 368

Short Title:	Inmates Prescriptions/Pistol Permits.	(Public)
Sponsors:	Senator Bingham (Primary Sponsor).	
Referred to:	Judiciary II.	

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A TEN DOLLAR CO-PAY FOR PRESCRIPTION MEDICATION DISPENSED IN A COUNTY JAIL AND TO PROVIDE FOR THE PISTOL PERMIT FEE COLLECTED BY SHERIFFS TO BE AN APPLICATION FEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-225(a) reads as rewritten:

"(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, the plan must be adopted by the governing body.

As a part of its plan, each unit may establish fees of not more than twenty dollars ($20.00) per incident for the provision of nonemergency medical care to ~~prisoners.~~prisoners and a fee of not more than ten dollars ($10.00) for a 30-day supply or less of a prescription drug. In establishing fees pursuant to this section, each unit shall establish a procedure for waiving fees for indigent prisoners."

SECTION 2. G.S. 14-404(e) is amended by adding a new section to read:

"(e) The sheriff shall charge for the sheriff's services upon ~~issuing the license or permit~~receipt of an application a fee of five dollars ($5.00)."

SECTION 3. This act becomes effective July 1, 2013, and applies to fees assessed or collected on or after that date.

SENATE BILL 368:
Inmates Prescriptions/Pistol Permits

2013-2014 General Assembly

Committee:	Senate Ref to Judiciary II. If fav, re-ref to Finance	**Date:**	March 25, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***This act requires prisoners in local confinement facilities to pay a fee of no more than $10 for a 30-day supply or less of a prescription drug. The act also changes the procedure for paying the fee for a pistol purchase permit. This act becomes effective July 1, 2013, and applies to fees assessed or collected on or after that date.***

BILL ANALYSIS:

- This act amends the requirements for local confinement facilities in developing a plan for medical care for prisoners by adding a fee of no more than $10 for a 30-day supply or less of a prescription drug. The fee would be waived for indigent prisoners.
- The act changes the time at which a person pays a $5 fee for a pistol purchase permit. Instead of paying the fee upon issuance of the permit, the fee would be paid upon the application for the permit.

EFFECTIVE DATE: The act becomes effective July 1, 2013, and applies to fees assessed or collected on or after that date.

O. Walker Reagan
Director

S368-SMRK-27 E1 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 369
PROPOSED COMMITTEE SUBSTITUTE S369-CSRV-10 [v.2]
3/25/2013 5:47:56 PM

Short Title: Name Change Requirements for Minors. (Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A PARENT TO APPLY FOR A NAME CHANGE FOR A MINOR CHILD WITHOUT CONSENT OF THE OTHER PARENT IF THE OTHER PARENT HAS BEEN CONVICTED OF CERTAIN CRIMINAL OFFENSES AGAINST THE MINOR CHILD OR A SIBLING OF THE MINOR CHILD.

The General Assembly of North Carolina enacts:

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

"(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. An application to change the name of a minor child may not be filed without the consent of both parents if both parents are living, unless one of the following applies:

(1) A minor who has reached the age of 16 may file an application to 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.

(2) A parent may file an application on behalf of the minor without the consent of the other parent if the other parent has abandoned the minor child.

(3) A parent may file an application on behalf of the minor without the consent of the other parent if the other parent has been convicted of any of the following offenses against the minor or a sibling of the minor:

a. Felonious or misdemeanor child abuse.

b. Taking indecent liberties with a minor in violation of G.S. 14-202.1.

c. Rape or any other sex offense in violation of Article 7A of Chapter 14 of the General Statutes.

d. Incest in violation of G.S. 14-178.

e. Assault, communicating a threat, or any other crime of violence.

Abandonment may be shown by filing ~~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.~~minor. 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. This act becomes effective October 1, 2013, and applies to applications for name changes filed on or after that date.

SENATE BILL 369:
Name Change Requirements for Minors

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 25, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S369-CSRV-10		

SUMMARY: ***This proposed committee substitute for Senate Bill 369 would permit a parent to apply for a name change for a minor child without consent of the child's other parent, if the other parent has abandoned the minor child or if the other parent has committed an act of violence against the minor or the minor's sibling.***

CURRENT LAW: Pursuant to G.S. 101-2, a person who wishes to change his or her name must file a petition before the clerk of the superior court of the county in which the person resides. An application to change the name of a minor child may be filed by the child's parents, or by a guardian or guardian ad litem. The law is construed to require the consent of both parents, if both are living. However when a minor who is at least 16 years old petitions for a name change with the consent of the parent who has custody of the minor and has supported the minor, consent of a parent who has abandoned the minor child is not required.

BILL ANALYSIS: Senate Bill 369 would allow one parent to petition for a name change for a minor child without consent of the other parent, if:

- The other parent has abandoned the minor.
- The other parent has been convicted of certain criminal offenses against the minor or a sibling of the minor -- including child abuse, rape, incest, taking indecent liberties with a minor, assault, communicating a threat, or any other crime of violence.

EFFECTIVE DATE: The bill would become effective October 1, 2013 and apply to applications for name changes filed on or after that date.

O. Walker Reagan
Director

S369-SMRV-24 CSRV-10 -V2

Research Division
(919) 733-2578

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 3-26 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Jacqlyn Grilli	Marshville	Tucker
2 Rebecca Chisholm	Jacksonville	Brown
3 Timothy Jordan	Winston-Salem	Brunstetter
4 ~~Nick Thomas~~	Gaston	~~Harrington~~
5 Matt Taylor	Wilson	Newton
6 Katie Hunter	Raleigh	Berger
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 03/26/13 ROOM: 1124

1. ROBERT YOUNG
2. BILLY FRITSCHER
3. _____
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

March 26, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lorin Freeman	Wake CSC
Steven Webb	NCABA
Colleen Kochanek	KLG
Alex Miller	KLG

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

March 26, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jan Kennedy	CSC New Hanover County
Bill Kaylor	Kaylor Law Firm
Mike Wills	North Carolina Bar Assoc
David Bohm	NC Bar Assoc. - Cary
Bob Black	NCFM
Jeremy Brouner	NC Bar Assoc.

VISITOR REGISTRATION SHEET

Senate JII Committee — March 26, 2013

Name of Committee — **Date**

♡

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mark Blad	NCBAA
Mike Mana	NCBAA
TJ Bugbee	Nexsen Pruet
Lynda Imhoff	NCBA
Todd Barlow	NC Advocates for Justice
Andrew Cagle	NC Sheriffs' Assn
Andrew Whitley	Clerk of Court
Greg Stahl	NC Sheriffs' Assoc
Rachel M Jaynes	Clerk of Sup. Ct. Nash Co
Jennifer Allen	Clerk of Sup Ct. Pasq. Co
Barbara Rose	Cof. of Clerks of Sup Ct

DeAnne Mangum (Finance CA)

n:	DeAnne Mangum (Finance CA)
t:	Wednesday, March 27, 2013 02:43 PM
	DeAnne Mangum (Finance CA)
Subject:	<NCGA> Senate Judiciary II Committee Meeting Notice for Thursday, March 28, 2013 at 10:00 AM - CANCELLED

Principal Clerk ____
Reading Clerk ____

Cancelled Notice

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will **NOT** meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	March 28, 2013	10:00 AM	1124/1224 LB

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	March 28, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 369	Name Change Requirements for Minors.	Senator Bingham

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Senate Committee on Judiciary II
Tuesday, April 2, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 222	Revise Controlled Substances Reporting.	Sen. Allran Sen. Bingham
SB 369	Name Change Requirements for Minors.	Sen. Bingham
SB 434	Ignition Interlock Req'd / All DWIs.	Sen. Rabon

Adjournment

Senate Judiciary II Committee
Tuesday, April 2, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, April 2, 2013 in room 1124 of the Legislative Building. Garrett Boyd of Pinetown, Miles Wiggins of Nashville, Catherine Potter of Wilson, Prakash Kadiri of Concord, Elizabeth Fisher of Charlotte, and Sam Jones of Wilson-Salem served as pages. Senator Daniel presided as chair.

S.B. 434 – Ignition Interlock Req'd/All DWIs

This bill was pulled at the request of the sponsor.

S.B. 222 – Revise Controlled Substances Reporting

Senator Allran was recognized to explain the bill, which would amend the list of dispensers of controlled substances who are exempt from entering information into the Controlled Substances Reporting System; and makes other changes relating to System information and its accessibility. Senator Allran then offered an amendment which Hal Pell, a Staff Attorney with the Research Division, explained. The amendment outlined the Department of Health and Human Services review process of the System information. Amy Whitehead, Director of Health Policy – NC Medical Society, spoke in favor of the bill. Bill Bronson, Drug Control Unit Program Director, requested professional standards to alert Medical Board without making abusers aware of scrutiny since the process does not currently exist. He seeks a fair and objective process that protects patients and has the support of the NC Medical Society. Senator Cook moved to adopt the amendment and the motion carried. Senator Allran offered a second amendment which was technical and moved for its adoption. The motion carried. Andy Ellen, NC Retail Merchant Association's Lobbyist, was recognized to speak against the 24 hour reporting requirement as burden to businesses. Dr. Michael Lancaster was recognized to explain the 24 hour recommendation was requested by emergency rooms to prevent unintentional poisonings. Kay Samford, Project Lazarus of Wilkes County, was recognized to speak in favor of the bill. The bill was recalendared for the next meeting. A copy of the bill, the summary, and the amendments is attached.

S.B. 369 – Name Change Requirements for Minors

Senator Bingham was recognized to explain the bill. Senator Randleman moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would permit a parent to apply for a name change for a minor child without consent of the child's other parent, if the other parent has abandoned the minor child or if the other parent has committed an act of violence against the minor or any of the minor's sibling. Lauren Freeman, Wake County Clerk of Court, was recognized to explain the PCS and answer questions. Senator Cook moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 10:56 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 2, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 222	Revise Controlled Substances Reporting.	Senator Allran Senator Bingham
SB 369	Name Change Requirements for Minors.	Senator Bingham
SB 434	Ignition Interlock Req'd / All DWIs.	Senator Rabon

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Wednesday, April 03, 2013

Senator Daniel,
submits the following with recommendations as to passage:

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

SB **369** Name Change Requirements for Minors.

Draft Number:	S369-PCS35306-RV-13
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Stan Bingham will handle SB 369

SENATE BILL 222*

Short Title:	Revise Controlled Substances Reporting.	(Public)
Sponsors:	Senators Allran, Bingham (Primary Sponsors); Clark and Hise.	
Referred to:	Health Care.	

March 7, 2013

A BILL TO BE ENTITLED

AN ACT TO REVISE THE NORTH CAROLINA CONTROLLED SUBSTANCES REPORTING SYSTEM ACT, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.72 reads as rewritten:

"**§ 90-113.72. Definitions.**

The following definitions apply in this Article:

(1) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(2) "Controlled substance" means a controlled substance as defined in G.S. 90-87(5).

(3) "Department" means the Department of Health and Human Services.

(4) "Dispenser" means a person who delivers a Schedule II through V controlled substance to an ultimate user in North Carolina, but does not include any of the following:

a. A licensed hospital or long-term care pharmacy that dispenses such substances for the purpose of inpatient administration.

~~b. A person authorized to administer such a substance pursuant to Chapter 90 of the General Statutes.~~

c. A wholesale distributor of a Schedule II through V controlled substance.

d. A person licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes.

(5) "Ultimate user" means a person who has lawfully obtained, and who possesses, a Schedule II through V controlled substance for the person's own use, for the use of a member of the person's household, or for the use of an animal owned or controlled by the person or by a member of the person's household."

SECTION 2. G.S. 90-113.73 reads as rewritten:

"**§ 90-113.73. Requirements for controlled substances reporting system.**

(a) The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser that is unable to submit prescription

information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted. The dispenser shall report the information required under this section ~~on a monthly basis for the first 12 months of the Controlled Substances Reporting System's operation, and twice monthly thereafter, until January 2, 2010, at which time dispensers shall report no later than seven days~~ no later than 24 hours after the prescription is dispensed in a format as determined annually by the Department based on the format used in the majority of the states operating a controlled substances reporting system.

(b) The Commission shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

(1) The dispenser's DEA number.
(2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:
a. Full address, including city, state, and zip code,
b. Telephone number, and
c. Date of birth.
(3) The date the prescription was written.
(4) The date the prescription was filled.
(5) The prescription number.
(6) Whether the prescription is new or a refill.
(7) Metric quantity of the dispensed drug.
(8) Estimated days of supply of dispensed drug, if provided to the dispenser.
(9) National Drug Code of dispensed drug.
(10) Prescriber's DEA number.
(11) Method of payment for the prescription.
(12) Specialty of practitioner, if known.
(13) Documentation of photographic identification presented by the person seeking dispensation of the prescription, when such documentation is required by G.S. 90-106.1.

(c) A dispenser shall not be required to report instances in which a controlled substance is provided directly to the ultimate user and the quantity provided does not exceed a 48-hour supply."

SECTION 3. G.S. 90-113.74 reads as rewritten:

"**§ 90-113.74. Confidentiality.**

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. Except as otherwise provided by this section, prescription information shall not be disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

(b1) The Department may review the prescription information data in the controlled substances reporting system in order to:

(1) Identify information that may indicate a person is obtaining prescriptions for controlled substances in a manner that may represent abuse, diversion of controlled substances, or an increased risk of harm to the patient. When such

information is identified, the Department may notify the practitioners who prescribed or dispensed the controlled substances.

(2) Identify information that may indicate a breach of professional standards by a practitioner who prescribes or dispenses controlled substances. When such information is identified, the Department may notify the agency responsible for licensing, registering, or certifying the practitioner.

(b2) The Commission, in consultation with a panel of medical experts, shall develop criteria that shall be used to evaluate whether there is a breach of professional standards under subdivision (2) of subsection (b1) of this section by a practitioner who prescribes or dispenses controlled substances.

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

(1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients. A person authorized to receive data pursuant to this paragraph may delegate the authority to receive the data to other persons working under his or her direction and supervision, provided the Department approves the delegation.

(2) An individual who requests the individual's own controlled substances reporting system information.

(3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication and who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.

(4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.

(5) To a court pursuant to a lawful court order in a criminal action.

(6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.

(7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

(d) The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual patients who received prescription medications from dispensers.

(e) In the event that the Department finds patterns of prescribing medications that are unusual, the Department shall inform the Attorney General's Office of its findings. The Office of the Attorney General shall review the Department's findings to determine if the findings should be reported to the SBI for investigation of possible violations of State or federal law relating to controlled substances.

(f) The Department shall purge from the controlled substances reporting system database all information more than six years old.

(g) Nothing in this Article shall prohibit a person authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes from disclosing or disseminating data regarding a particular patient obtained under subsection (c) of this section to another person (i) authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes and (ii) authorized to receive the same data from the Department under subsection (c) of this section.

(h) Nothing in this Article shall prevent persons licensed or approved to practice medicine or perform medical acts, tasks, and functions pursuant to Article 1 of Chapter 90 of the General Statutes from retaining data received pursuant to subsection (c) of this section in a patient's confidential health care record."

SECTION 4. G.S. 90-113.75 reads as rewritten:

"**§ 90-113.75. Civil penalties; other remedies; immunity from liability.**

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this ~~section~~ Article or a rule adopted pursuant to this ~~section~~ Article shall be assessed a civil penalty by the Department not to exceed ~~five thousand dollars ($5,000)~~ten thousand dollars ($10,000) per violation. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes. The Commission shall adopt rules establishing the factors to be considered in determining the amount of the penalty to be assessed.

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this ~~section~~ Article or a rule adopted pursuant to this Article may bring an action against any person or entity who has intentionally, knowingly, or negligently released confidential information or records concerning the individual for either or both of the following:

(1) Nominal damages of one thousand dollars ($1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the individual.

(c) A health care provider licensed, or an entity permitted under this Chapter that, in good faith, makes a report or transmits data required or allowed by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of making the report or transmitting the data."

SECTION 5. G.S. 90-5.2 is amended by adding a new subsection to read:

"(a1) The Board shall make e-mail addresses and facsimile numbers reported pursuant to G.S. 90-5.2(a)(7) available to the Department of Health and Human Services for use in the North Carolina Controlled Substance Reporting System established by Article 5E of this Chapter."

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

SENATE BILL 222:
Revise Controlled Substances Reporting

2013-2014 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Finance	**Date:**	April 1, 2013
Introduced by:	Sens. Allran, Bingham	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***This act amends the list of dispensers of controlled substances who are exempt from entering information into the Controlled Substances Reporting System (CSRS), and makes other changes relating to System information and its accessibility. This act is effective when it becomes law.***

[As introduced, this bill was identical to H173, as introduced by Reps. Horn, Brisson, Fulghum, Hollo, which is currently in House Health and Human Services, if favorable, Judiciary Subcommittee B.]

BILL ANALYSIS: This act:

- Removes the current CSRS reporting exemption given to physicians registered as dispensers of controlled substances.
- Exempts persons licensed to practice veterinary medicine from reporting controlled substance dispensing information into the CSRS.
- Adds a provision that exempts dispensers from reporting instances where a controlled substance is provided directly to the ultimate user, and the quantity provided does not exceed a 48-hour supply.
- Adds new categories of information required for input into the CSRS: (i) method of payment; (ii) specialty of practitioner, and documentation of photographic identification presented (when documentation required by statute).
- Authorizes the Department to review CSRS information in order to identify: (i) persons in danger of drug abuse or increased risk of harm, or if drugs are being diverted, and (ii) identify whether person authorized to prescribe or dispense drugs may have breached professional standards; requires the Commission to develop criteria to make this determination.
- Increases penalties for persons who unlawfully obtain information from the CSRS; requires the Commission to adopt rules to establish factors for penalty determinations.

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

S222-smrk-30(e1)

O. Walker Reagan
Director

S222-SMRK-35 E1 -V2

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 222*

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

S222-ARK-19 [v.1]

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

Date _____,2013

Senator Allran

moves to amend the bill on page 2, between lines 30 and 31, by inserting the following:

"(c) The Department may review the prescription information data in the controlled substances reporting system in order to:

(1) Identify information that may indicate a person is obtaining prescriptions for controlled substances in a manner that may represent abuse, diversion of controlled substances, or an increased reisk of harm to the patient. When such information is identified, the Department may notifiy the practitioners who prescribed or dispensed the controlled substances.

(2) Identify information that may indicate a breach of professional standards by a practitioner who prescribes or dispenses controlled substances. When such information is identified, and the Deparment ultimately communicates the findings to a practitioner's licensing agency, the Department shall contemporaneously notify the practitioner of the potential breach of professional standards. If after 90 days form the date notice is received by the practitioner, the practitioner's prescribing patterns continue to indicate a potential breach of professional standards, the Department may notify the agency responsible for licensing, registering or certifying the practitioner for the purpose of further inquiry. No agency receiving a report of the prescribing activity of any licensee pursuant to the paragraph shall initiate an investigation of that licensee without first consulting at least two experts of the same or similar specialty as the licensee who independently conclude that an investigation by the agency is needed to obtain additional information related to the licensee's prescribing or dispensing of controlled substances identified in the report.

(d) The Commission, in consultation with a panel of medical experts representing the North Carolina Medical Board, North Carolina Board of Pharmacy, and the North Carolina Board of Nursing, shall develop criteria that shall be used to evaluate whether there is a breach of professional standards under subdivision (2) of subsection (c) of this section by a practitioner who prescribes or dispenses controlled substances." And

By re-lettering succeeding subsections accordingly.

* S 2 2 2 - A R K - 1 9 - V - 1 *

AMENDMENT

Senate Bill 222*

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

S222-ARK-19 [v.1]

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 4/2/13

S. B. No. 722 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
(Sen.) ALLRAN

1 moves to amend the bill on page 1, line 36
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4
5 "The Department may issue a waiver to a
6 dispenser ~~that~~ who is unable to submit
7 prescription".
8
9
10
11
12
13
14
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19

SIGNED Allran

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. _____ DATE 4-2-13

S. B. No. 222 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 6

( ) WHICH CHANGES THE TITLE

by deleting "24 hours" and substituting "three business days";

and on page 2, line 7 by deleting "dispensed" and substituting "~~dispensed~~ delivered"

and on page 2, lines 27-30 by deleting those lines;

and on page 4, line 39 by rewriting that line to read:

"SECTION 6. This act becomes effective January 1, 2014."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 369
PROPOSED COMMITTEE SUBSTITUTE S369-CSRV-13 [v.1]
4/2/2013 1:09:20 AM

Short Title: Name Change Requirements for Minors. (Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN NAME CHANGE REQUIREMENTS AND AUTHORIZE A PARENT TO APPLY FOR A NAME CHANGE FOR A MINOR CHILD WITHOUT CONSENT OF THE OTHER PARENT IF THE OTHER PARENT HAS BEEN CONVICTED OF CERTAIN CRIMINAL OFFENSES AGAINST THE MINOR CHILD OR A SIBLING OF THE MINOR CHILD.

The General Assembly of North Carolina enacts:

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

"(d) An application to change the name of a minor child may be filed by the child's parent or parents, ~~guardian,~~ guardian pursuant to Article 6 of Chapter 35A of the General Statutes, or guardian ad ~~litem,~~ litem pursuant to G.S. 7B-601, 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. An application to change the name of a minor child may not be filed without the consent of both parents if both parents are living, unless one of the following applies:

(1) A minor who has reached the age of 16 may file an application to 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.

(2) A parent may file an application on behalf of the minor without the consent of the other parent if the other parent has abandoned the minor child.

(3) A parent may file an application on behalf of the minor without the consent of the other parent if the other parent has been convicted of any of the following offenses against the minor or a sibling of the minor:

a. Felonious or misdemeanor child abuse.

b. Taking indecent liberties with a minor in violation of G.S. 14-202.1.

c. Rape or any other sex offense in violation of Article 7A of Chapter 14 of the General Statutes.

d. Incest in violation of G.S. 14-178.

e. Assault, communicating a threat, or any other crime of violence.

For purposes of subdivisions (1) and (2) of this subdivision, abandonment may be shown by filing ~~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.~~minor. 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. A parent who files an application on behalf of a minor pursuant to subdivision (3) of this subsection shall submit proof of the other parent's conviction to the clerk at the time of filing."

SECTION 2. G.S. 101-5 reads as rewritten:

"**§ 101-5. Name change application requirements; grounds for clerk to order or deny name change; certificate and record.**

(a) A person who desires to change his or her true name may apply to the clerk of superior court of the county where the person resides and must submit all of the following information to the clerk in support of the application for a name change:

(1) The applicant's true name, county of birth, date of birth, the full name of parents as shown on birth certificate, and the name sought to be adopted.

(2) The ~~certified~~ results of ~~an official~~ a state and national criminal history record ~~check.~~check conducted within 90 days of the date of application by the State Bureau of Investigation, the Federal Bureau of Investigation, or a Channeler approved by the Federal Bureau of Investigation. The requirements of this subdivision shall not apply to an application to change the name of a minor less than 16 years of age.

(3) A sworn statement as to the following:

a. That the applicant is a bona fide resident of, and domiciled in, the county where the change of name is sought.

b. Whether or not the applicant has outstanding tax or child support obligations.

(b) The clerk shall instruct the applicant on the process for having fingerprints taken and submitted for the criminal history record check, including providing information on law enforcement agencies or acceptable service providers. The clerk may require the applicant to provide any other information that the clerk determines is reasonably necessary for the fair and complete review of the name change application.

(c) The clerk shall review all the information contained in the application and otherwise available to the clerk to determine whether there is good and sufficient reason to grant or to deny the name change.

(d) Except as prohibited by G.S. 101-6(c), if the clerk finds that good and sufficient reasons exist for the change of name, and the applicant has met the requirements of subsection (a) of this section, it is the clerk's duty to issue an order changing the name of the applicant from that person's true name to the name sought to be adopted. The order shall contain all of the following:

(1) The true name, the county of birth, the date of birth, the full name of parents as shown on birth certificate, and the name sought to be adopted.

(2) The clerk's summary of the information reviewed in connection with the application.

The clerk shall issue to the applicant a certificate under the clerk's hand and seal of office, stating the change made in the applicant's name, and shall also record the application and order on the docket of special proceedings in his court.

(e) The clerk shall forward the order granting the name change to:

(1) The State Registrar of Vital Statistics on a form provided by the Registrar. If the applicant was born in North Carolina, the State Registrar shall note the change of name of the individual or individuals specified in the order on the birth certificate of that individual or those individuals and shall notify the register of deeds in the county of birth. If the applicant was born in another state of the United States, the State Registrar shall forward the notice of change of name to the registration office of the state of birth. If the name change is not a matter of public record pursuant to G.S. 101-2(c), the clerk shall notify the State Registrar; however, the State Registrar shall not notify the register of deeds in the applicant's county of birth or the registration office of the state of birth.

(2) The Division of Criminal Information at the State Bureau of Investigation, which shall update its records to show the name change.

(f) If the clerk finds that good and sufficient reasons exist to deny the applicant's request for a name change, it is the clerk's duty not to issue an order changing the name of the applicant from that person's true name to the name sought to be adopted. The order denying the name change shall state the reasons for the denial. If the applicant desires to appeal the clerk's decision, the applicant must petition the ~~chief~~ resident superior court judge within 30 days of the date of the order denying the name change to request a reconsideration of the application. The reconsideration decision of the ~~chief~~ resident superior court judge is final and not subject to appeal. An unsuccessful applicant on reconsideration is subject to a waiting period of 12 months from the date of the adverse decision of the ~~chief~~ resident superior court judge before the applicant may submit another name change application. A successful applicant on reconsideration shall be granted the name change by the clerk in like manner as prescribed by subsection (d) of this section.

(g) Upon information obtained by the clerk of fraud or material misrepresentation in the application for a name change, the clerk on his or her own motion may set aside the order granting the name change after notice to the applicant and opportunity to be heard. If the clerk sets aside the name change order, the clerk shall notify the State Registrar of Vital Statistics and the Division of Criminal Information."

SECTION 3. This act becomes effective October 1, 2013, and applies to applications for name changes filed on or after that date.

SENATE BILL 369:
Name Change Requirements for Minors

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 2, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition S369-CSRV-13		Committee Counsel

SUMMARY: ***This proposed committee substitute for Senate Bill 369 would permit a parent to apply for a name change for a minor child without consent of the child's other parent, if the other parent has abandoned the minor child or if the other parent has committed an act of violence against the minor or the minor's sibling.***

CURRENT LAW: Pursuant to G.S. 101-2, a person who wishes to change his or her name must file a petition before the clerk of the superior court of the county in which the person resides. An application to change the name of a minor child may be filed by the child's parents, or by a guardian or guardian ad litem. The law is construed to require the consent of both parents, if both are living. However when a minor who is at least 16 years old petitions for a name change with the consent of the parent who has custody of the minor and has supported the minor, consent of a parent who has abandoned the minor child is not required.

BILL ANALYSIS: Senate Bill 369 would allow one parent to petition for a name change for a minor child without consent of the other parent, if:

- The other parent has abandoned the minor.
- The other parent has been convicted of certain criminal offenses against the minor or a sibling of the minor -- including child abuse, rape, incest, taking indecent liberties with a minor, assault, communicating a threat, or any other crime of violence.

The parent filing the application would be required to submit proof of the other parent's conviction at the time of filing.

Section 2 of the bill would specify that the criminal record check required for a name change must be conducted within 90 days of the date of application by the SBI, the FBI, or an FBI-approved channeler. The criminal record check would not be required if the name change is for a minor under the age of 16. If the name change is not a matter of public record (confidentiality program, victim of domestic violence or abuse) the State Registrar would not notify the register of deeds about the name change.

EFFECTIVE DATE: The bill would become effective October 1, 2013 and apply to applications for name changes filed on or after that date.

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-2 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 ~~Garrett~~ Boyd	Pheton	Cook
2 Miles Wiggins	Nash ville	Bryant
3 Catherine Potter	Wilson	Newton
4 Prakash Kadiri	Concord	Hartsell
5 Elizabeth Fisher	Charlotte	Rucho
6 Sam Jones	Winston-Salem	Brunstetter
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/02/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JI Committee
Name of Committee

April 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Annalicse Dolph	Dolph Law
Heather N Robinson	NCRMA
Cassandra Skinner	NCACC
Mildred Spearman	NCACC
[signature]	SOS
Susanna Davis	Williams Mullen
Dustin Williams	NCNA
[signature]	Nelson Mullins
[signature]	Mayor of Waynesville
JDELANIER	NELSON MULLINS
[signature]	[illegible]

4-2-13

NAME	FIRM
Scott Mooney	
M. O'Neill	
Mark Blair	NCBAA
DAVID BARNES	Electrification
Michelle Frazier	MF+S

VISITOR REGISTRATION SHEET

Senate JI Committee
Name of Committee

April 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gregg Stahl	NC Shortfalls Assoc.
Marcy Onieal	Town Mgr. Waynesville, NC
Mitchell Young	Lake Junaluska Assembly
Todd Barlow	NC Advocates for Justice
Colleen Kochanek	NCCEP

VISITOR REGISTRATION SHEET

Senate JI Committee
Name of Committee

April 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	MWC
Scott Proescholdbell	DHHS - DPH
Kay Sanford	Project Lazarus
Lorene Temming	North Carolina Medical Society
Amy Whited	NCMS
Ken Melton	K.M.A.
Philip Ebay	Bmre
Will Grantham	MLJC
John Hardin	MFJS
Kara Weishaar	Smith Anderson
[signature]	NCAA
[signature]	HHA

VISITOR REGISTRATION SHEET

Senate JI Committee
Name of Committee

April 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	DHHS
Jan Kennedy	CSC - New Hanover Co.
Susan A. Hicks	CSC- Moore County
Lorrin Freeman	CSC - Wake County
Barbara Morse	Conf of Clerks of Sup Ct
Stephanie Hawco	WPTF
[illegible]	NCDS & NCPTA
Lisa Ward	NCDS
Dana Simon	SA
Mike Lancaster	CCNC
Elizabeth Hudgins	CFTF

Senate Committee on Judiciary II
Thursday, April 4, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 222	Revise Controlled Substances Reporting.	Senator Allran Senator Bingham
SB 443	Abandoned Firearms to State Control.	Senator Brock
SB 452	Jurisdictional Amts/Arbitration/Sm Claims Ct.	Senator Goolsby

Adjournment

Senate Judiciary II Committee
Thursday, April 4, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, April 4, 2013 in room 1124 of the Legislative Building. Elizabeth Fisher of Charlotte, Gina Higgins of Wendell, Haley Ashley, Caroline Kerns and Leah Wills of Burlington and Jasmin McNeill of Raleigh served as pages. Senator Daniel presided as chair.

S.B. 222 – Revise Controlled Substances Reporting

The bill was pulled at the request of the sponsor.

S.B. 443 – Abandoned Firearms to State Control

This bill was calendared for discussion only. Senator Brock was recognized to explain the bill. It would provide that abandoned or unclaimed firearms would be transferred by local law enforcement to the State Bureau of Investigation for disposition. Fred Baggett, NC Police Chief Association's Representative, and Anthony Roulette, NRA's State Liaison, were recognized to speak in favor of the bill. A copy of the bill and the summary is attached.

S.B. 452 – Jurisdictional Amts/Arbitration/Sm Claims Ct.

Senator Goolsby and Brenda Carter, an Attorney with the Research Division, were recognized to explain the bill and answer questions. The bill would increase the jurisdictional amounts in small claims court and in the district court division and make arbitration mandatory in civil cases where claims do not exceed $20,000. It would also provide for the assessment of court costs and attorneys' fees against the appealing party in small claims matters when an arbitrator's decision in favor of the other party is affirmed on appeal. Mildred Spearman, NC Administrative Office of the Courts, was recognized to answer questions. Dick Taylor, NC Advocates for Justice, was recognized to request mediation language in the bill. Senator Tucker moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 10:39 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

Corrected #2: S401 - Share Arrest Warrant Status/Pub. Assistance has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 4, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 222	Revise Controlled Substances Reporting.	Senator Allran Senator Bingham
SB 443	Abandoned Firearms to State Control.	Senator Brock
SB 452	Jurisdictional Amts/Arbitration/Sm Claims Ct.	Senator Goolsby

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected #1: S222 - Revise Controlled Substances Reporting has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 4, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 222	Revise Controlled Substances Reporting.	Senator Allran Senator Bingham
SB 401	Share Arrest Warrant Status/Pub. Assistance.	Senator Tucker
SB 443	Abandoned Firearms to State Control.	Senator Brock
SB 452	Jurisdictional Amts/Arbitration/Sm Claims Ct.	Senator Goolsby

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 4, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 401	Share Arrest Warrant Status/Pub. Assistance.	Senator Tucker
SB 443	Abandoned Firearms to State Control.	Senator Brock
SB 452	Jurisdictional Amts/Arbitration/Sm Claims Ct.	Senator Goolsby

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 443

Short Title:	Abandoned Firearms to State Control.	(Public)
Sponsors:	Senator Brock (Primary Sponsor).	
Referred to:	Judiciary II.	

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO TRANSFER ABANDONED FIREARMS FROM LOCAL LAW ENFORCEMENT AGENCIES TO THE STATE FOR DISPOSITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-11.2 reads as rewritten:

"**§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial evidence.**

(a) Definition. – For purposes of this section, the term "unclaimed firearm" means a firearm that is found or received by a law enforcement agency and that remains unclaimed by the person who may be entitled to it for a period of 30 days after the publication of the notice required by subsection (b) of this section. The term does not include a firearm that is seized and disposed of pursuant to G.S. 15-11.1 or a firearm that is confiscated and disposed of pursuant to G.S. 14-269.1.

(b) Published Notice of Unclaimed Firearm. – When a law enforcement agency finds or receives a firearm and the firearm remains unclaimed for a period of 180 days, the agency shall publish at least one notice in a newspaper published in the county in which the agency is located. The notice shall include all of the following:

(1) A statement that the firearm is unclaimed and is in the custody of the law enforcement agency.

(2) A statement that the firearm may be sold or otherwise disposed of unless the firearm is claimed within 30 days of the date of the publication of the notice.

(3) A brief description of the firearm and any other information that the chief or head of the law enforcement agency may consider necessary or advisable to reasonably inform the public about the firearm.

~~(c) If the firearm remains unclaimed for a period of 30 days after the publication of the notice, then the person who found the firearm and turned it over to the law enforcement agency may claim the firearm provided the person satisfies the custodial law enforcement agency holding the firearm that the person is qualified under State and federal law to possess the firearm and also presents a pistol permit issued in accordance with Article 52A of Chapter 14 of the General Statutes.~~

(d) If the firearm remains unclaimed for a period of 30 days after the publication of the ~~notice and the person who found the firearm does not claim it as provided by subsection (c) of this section,~~ notice, then the head or chief of the law enforcement agency shall transfer the firearm to the State Bureau of Investigation (SBI). ~~may apply to the appropriate district court for an order of disposition of the unclaimed firearm. The application shall be written.~~

(e) Disposition of Firearm. – The SBI, in the discretion of the agency Director, ~~judge, after hearing, may order the disposition~~ shall dispose of the firearm in one of the following ways:

(1) By ~~ordering the firearm turned over to be~~ having the firearm destroyed if the firearm does not have a legible, unique identification number, or is unsafe for use because of wear, damage, age, or modification, and will not be disposed of pursuant to subdivision (3) of this subsection. The SBI shall ~~destroyed by the sheriff of the county in which the law enforcement agency applying for the order of disposition is located or by the sheriff's duly authorized agent. The sheriff shall~~ maintain a record of the destruction of the firearm.

(2) By ~~ordering~~ transferring the firearm ~~turned over to the~~ to (i) a law enforcement agency applying for the disposition of the firearm for ~~(i)~~ the official use of the agency or (ii) ~~sale, trade, or exchange by the agency~~ by selling the firearm at a public auction to persons licensed as firearms collectors, dealers, importers, or manufacturers ~~to a federally licensed firearm dealer~~ in accordance with all applicable State and federal firearm laws. The ~~court may order a disposition~~ SBI shall dispose of the firearm pursuant to this ~~subsection~~ subdivision only if the firearm has a legible, unique identification number.

(3) By maintaining the firearm for training or experimental purposes or transferring the firearm to a museum or historical society.

(f) Disbursement of Proceeds of Sale. – If the ~~law enforcement agency~~ SBI sells the ~~firearm,~~ firearm pursuant to subdivision (2) of subsection (e) of this section, then the proceeds of the sale shall be retained by the ~~law enforcement agency~~ SBI and used for law enforcement purposes. The ~~receiving law enforcement agency~~ SBI shall maintain a record and inventory of all firearms received from local law enforcement agencies pursuant to this ~~section.~~ section, as well as the disposition of the firearm, including any funds received from a sale of a firearm or any firearms or other property received in exchange or trade of a firearm."

SECTION 2. This act becomes effective July 1, 2013, and applies to any firearm found or received by a local law enforcement agency on or after that date.

SENATE BILL 443:
Abandoned Firearms to State Control

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 3, 2013
Introduced by:	Sen. Brock	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act provides that abandoned or unclaimed firearms would be transferred by local law enforcement to the State Bureau of Investigation for disposition.***

CURRENT LAW: Local law enforcement is required to provide a notice in a newspaper stating that the firearm may be sold or otherwise disposed of unless it is claimed within 30 days of date of the publication. If unclaimed, a person that found the firearm may claim it upon satisfactory proof of eligibility to possess it. If no one claims the firearm, then the head of the law enforcement agency seeks a court order to dispose of the firearm. The judge, by court order, directs the disposition of the firearm.

BILL ANALYSIS: The act provides that if a firearm is unclaimed, then it is transferred to the State Bureau of Investigation. The SBI may then:

- Have the firearm destroyed if it has no identifiable number or is unsafe for use.
- Transfer the firearm to a law enforcement agency.
- Sell the firearm at public auction to persons licensed as firearms collectors, dealers, importers, or manufacturers.

If the firearm is sold, then the proceeds of the sale are retained by the SBI, and used for law enforcement purposes. The SBI is required to maintain a record and inventory of all firearms received and the disposition, including the funds received or any firearms received in an exchange or trade.

EFFECTIVE DATE: This act becomes effective July 1, 2013, and applies to any firearm found or received by a local law enforcement agency on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 452

Short Title:	Jurisdictional Amts/Arbitration/Sm Claims Ct.	(Public)
Sponsors:	Senator Goolsby (Primary Sponsor).	
Referred to:	Judiciary II.	

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE JURISDICTIONAL AMOUNTS IN THE GENERAL COURT OF JUSTICE, TO MAKE ARBITRATION MANDATORY IN CERTAIN CIVIL CASES, AND TO PROVIDE GUIDANCE TO THE COURT FOR THE ASSESSMENT OF COURT COSTS AND ATTORNEYS' FEES IN SMALL CLAIMS MATTERS WHEN AN ARBITRATOR'S DECISION IN FAVOR OF THE APPELLEE IS AFFIRMED ON APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-210 reads as rewritten:

"**§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

(1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~five thousand dollars ($5,000);~~ ten thousand dollars ($10,000); and

(2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and

(3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

SECTION 2. G.S. 7A-243 reads as rewritten:

"**§ 7A-243. Proper division for trial of civil actions generally determined by amount in controversy.**

Except as otherwise provided in this Article, the district court division is the proper division for the trial of all civil actions in which the amount in controversy is ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20,000) or less; and the superior court division is the proper division for the trial of all civil actions in which the amount in controversy exceeds ~~ten thousand dollars ($10,000).~~ twenty thousand dollars ($20,000).

For purposes of determining the amount in controversy, the following rules apply whether the relief prayed is monetary or nonmonetary, or both, and with respect to claims asserted by complaint, counterclaim, cross-complaint or third-party complaint:

(1) The amount in controversy is computed without regard to interest and costs.

(2) Where monetary relief is prayed, the amount prayed for is in controversy unless the pleading in question shows to a legal certainty that the amount claimed cannot be recovered under the applicable measure of damages. The value of any property seized in attachment, claim and delivery, or other ancillary proceeding, is not in controversy and is not considered in determining the amount in controversy.

(3) Where no monetary relief is sought, but the relief sought would establish, enforce, or avoid an obligation, right or title, the value of the obligation, right, or title is in controversy. Where the owner or legal possessor of property seeks recovery of property on which a lien is asserted pursuant to G.S. 44A-4(a) the amount in controversy is that portion of the asserted lien which is disputed. The judge may require by rule or order that parties make a good faith estimate of the value of any nonmonetary relief sought.

(4) a. Except as provided in subparagraph c of this subdivision, where a single party asserts two or more properly joined claims, the claims are aggregated in computing the amount in controversy.

b. Except as provided in subparagraph c, where there are two or more parties properly joined in an action and their interests are aligned, their claims are aggregated in computing the amount in controversy.

c. No claims are aggregated which are mutually exclusive and in the alternative, or which are successive, in the sense that satisfaction of one claim will bar recovery upon the other.

d. Where there are two or more claims not subject to aggregation the highest claim is the amount in controversy.

(5) Where the value of the relief to a claimant differs from the cost thereof to an opposing party, the higher amount is used in determining the amount in controversy."

SECTION 3. G.S. 7A-37.1 reads as rewritten:

"**§ 7A-37.1. Statewide court-ordered, nonbinding arbitration in certain civil actions.**

(a) The General Assembly finds that court-ordered, nonbinding arbitration may be a more economical, efficient and satisfactory procedure to resolve certain civil actions than by traditional civil litigation and therefore authorizes court-ordered nonbinding arbitration as an alternative civil procedure, subject to these provisions.

(b) The Supreme Court of North Carolina may adopt rules governing this procedure and may supervise its implementation and operation through the Administrative Office of the Courts. These rules shall ensure that no party is deprived of the right to jury trial and that any party dissatisfied with an arbitration award may have trial de novo.

(c) This procedure ~~may~~ shall be employed in all civil actions where claims do not exceed ~~fifteen thousand dollars ($15,000), except that it shall not be employed in actions in which the sole claim is an action on an account, including appeals from magistrates on such actions.~~ twenty thousand dollars ($20,000), unless all parties to the action waive arbitration under this section.

(c1) ~~In~~Except as provided in subsection (c2) of this section, in cases referred to nonbinding arbitration as provided in this section, a fee of one hundred dollars ($100.00) shall be assessed per arbitration, to be divided equally among the parties, to cover the cost of providing arbitrators. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the State Treasurer.

(c2) In appeals in small claims actions under Article 19 of Chapter 7A of the General Statutes, if (i) the arbitrator finds in favor of the appellee, (ii) the arbitrator's decision is appealed for trial de novo under G.S. 7A-229, and (iii) the arbitrator's decision is affirmed on appeal, then the court shall consider the fact that the arbitrator's decision was affirmed as a

significant factor in favor of assessing all court costs and attorneys' fees associated with the case in both the original action and the two appeals, including the arbitration fee assessed under subsection (c1) of this section, against the appellant.

(d) This procedure may be implemented in a judicial district, in selected counties within a district, or in any court within a district, if the Director of the Administrative Office of the Courts, and the cognizant Senior Resident Superior Court Judge or the Chief District Court Judge of any court selected for this procedure, determine that use of this procedure may assist in the administration of justice toward achieving objectives stated in subsection (a) of this section in a judicial district, county, or court. The Director of the Administrative Office of the Courts, acting upon the recommendation of the cognizant Senior Resident Superior Court Judge or Chief District Court Judge of any court selected for this procedure, may terminate this procedure in any judicial district, county, or court upon a determination that its use has not accomplished objectives stated in subsection (a) of this section.

(e) Arbitrators in this procedure shall have the same immunity as judges from civil liability for their official conduct."

SECTION 4. This act becomes effective July 1, 2013, and applies to actions filed on or after that date.

SENATE BILL 452:
Jurisdictional Amts/Arbitration/Sm Claims Ct

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 3, 2013
Introduced by:	Sen. Goolsby	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 452 would increase the jurisdictional amounts in small claims court and in the district court division and make arbitration mandatory in civil cases where claims do not exceed $20,000. The bill would provide for the assessment of court costs and attorneys' fees against the appealing party in small claims matters when an arbitrator's decision in favor of the other party is affirmed on appeal.***

CURRENT LAW: Article 19 of Chapter 7A of the General Statutes governs small claim actions in District Court. Small claims court handles civil cases where a plaintiff requests assignment to a magistrate and the amount in controversy is $5,000 or less. The principal relief sought in small claims court is money, the recovery of specific personal property, or summary ejectment (eviction). There is no jury and usually no lawyers. A person who loses in small claims court may appeal for a trial before a judge in District Court.

Pursuant to G.S. 7A-343, the proper division for the trial of civil actions is generally determined by the dollar amount in controversy. The district court division is the proper division for the trial of civil actions in which the amount in controversy is $10,000 or less; the superior court division is the proper division for the trial of civil actions in which the amount in controversy exceeds $10,000.

Pursuant to G.S. 7A-34.1, court-ordered, nonbinding arbitration is available as an alternative to traditional litigation in civil actions where claims do not exceed $15,000. A fee of $100 is assessed per arbitration, with the amount equally divided among the parties.

BILL ANALYSIS: Senate Bill 452 would:

- Increase the jurisdictional amount for small claims court from $5,000 to $10,000.
- Increase the jurisdictional amount for the district court division from $10,000 to $20,000.
- Require court-ordered, non-binding arbitration in all civil actions where claims do not exceed $20,000, unless all parties to the action waive arbitration.
- Authorize the court to assess all court costs and attorneys' fees associated with a case, including the $100 arbitration fee, against the losing party who appeals a small claims case if the arbitrator finds in favor of the party that won the small claims action, and the arbitrator's decision is affirmed on appeal.

EFFECTIVE DATE: The bill would become effective July 1, 2013 and apply to actions filed on or after that date.

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-4-13 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 ~~Brianna~~ Burton	~~Raleigh~~	~~Hunt~~
2 ~~Bakash Kadira~~ Elizabeth Fisher	~~Concord, NC~~ Charlotte	~~Hartsell~~ Rucho
3 Gina Higgins	Wendell	Hunt
4 Haley Ashley	Burlington	Gunn
5 Caroline Kerns	Burlington	Gunn
6 Leah Wills	Burlington	Gunn
7 Jazsmin McNeill	Raleigh	Blue
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/04/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 4, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Preston	ACLU-NC
Scott Proescholdbell	DHHS - DPH
Thomas C. Caves, Jr.	NC State Bureau of Investigation
[illegible]	[illegible]
Anthony Roulette	NRA
Lori Ann Harris	~~LAH~~ A
Mildred Spearman	NCAOC
Kara Weishaar	Smith Anderson
Amy White	NCMS
[illegible]	NCPA
Elizabeth Robinson	NCAMP

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 4, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Christine Craig	WakeMed
Daniel Van Liere	Voant Health
Brian Blankenship	NC MTS
Colleen Kochanek	KLG
[illegible]	[illegible]
Andrew Cagle	NC Sheriffs' Assn.
[illegible]	ACCAT
[illegible]	NCMA
Andy Chase	KMA
Ken Melton	KMA

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 4, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Fred Baggett	Police chief
mcKee	CCNC-Raleigh
	CCNC-Raleigh
Fred Wadsworth	Eastern Seals UCP
Elliott Hudson	CFTF
Tom Mitchell	Benchmarks
	Cap. Roads
George Smith	Nexsen Pruet
Sarah Wolfe	MWC LLC
Susie Ward	NCDS
W Rotten Jr	NCDS & NCPTA

Senate Committee on Judiciary II
Tuesday, April 9, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 388	Bedding Law/Right of Entry.-AB	Senator Rabin Senator Cook Senator Walters
SB 594	Require Drug Testing/Work First Benefits.	Senator J. Davis

Adjournment

Senate Judiciary II Committee
Tuesday, April 9, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, April 9, 2013 in room 1027 of the Legislative Building. Morgan Bass of Farmville, Shyheem Carmon of Hookerton, Brett Shackleford of Snow Hill and Jamar Jones of Snow Hill served as pages. Senator Allran presided as chair.

S.B. 388 – Bedding Law/Right of Entry - AB

Senator Rabin was recognized to explain the bill. It would give the Commissioner of Agriculture the right of entry upon the premises of any place where entry is necessary to enforce the provisions of the bedding laws under the statutes. The bill provides that if consent for entry is not obtained, an administrative search and inspection warrant may be obtained for the purposes of entry. Senator Cook moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 594 – Require Drug Testing/Work First Benefits

Senator Davis and Brenda Carter, an attorney with the Research Division, were recognized to explain the bill and answer questions. The bill would require drug testing for applicants and recipients of the Work First Program. Senator Daniel was recognized to offer a technical amendment which would keep the drug test results confidential from law enforcement. Senator Bingham moved to adopt the amendment and the motion carried. Senator Tucker moved for a favorable report with a referral to the Senate Health Committee and the motion carried. A copy of the bill, the summary and the amendment is attached.

The meeting adjourned at 10:39 a.m.

Austin Allran

Senator Austin Allran
Presiding Chair

DeAnne Mangum

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 9, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 388	Bedding Law/Right of Entry.-AB	Senator Rabin Senator Cook Senator Walters
SB 594	Require Drug Testing/Work First Benefits.	Senator J. Davis

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Wednesday, April 10, 2013

Senator Allran,
submits the following with recommendations as to passage:

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

SB **594** Require Drug Testing/Work First Benefits.

Draft Number:	S594-PCS95077-RV-18
Sequential Referral:	None
Recommended Referral:	Health Care
Long Title Amended:	No

TOTAL REPORTED: 1

Senator James Davis will handle SB 594

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, April 09, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

SB **388** Bedding Law/Right of Entry.-AB

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Ronald Rabin will handle SB 388

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 388*

Short Title:	Bedding Law/Right of Entry.-AB	(Public)
Sponsors:	Senators Rabin, Cook, Walters (Primary Sponsors); Brock and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A RIGHT OF ENTRY FOR THE COMMISSIONER OF AGRICULTURE TO ENFORCE THE LAWS RELATED TO BEDDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-65.105 is amended by adding a new subsection to read:

"**§ 106-65.105. Enforcement by the Department of Agriculture and Consumer Services.**

...

(e) The Commissioner of Agriculture shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Article or the rules adopted by the Board of Agriculture. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2."

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

SENATE BILL 388:
Bedding Law/Right of Entry.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 8, 2013
Introduced by:	Sens. Rabin, Cook, Walters	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 388 gives the Commissioner of Agriculture (Commissioner) the right of entry upon the premises of any place where entry is necessary to enforce the provisions of the bedding laws under the statutes. The bill provides that if consent for entry is not obtained, an administrative search and inspection warrant may be obtained for the purposes of entry.***

CURRENT LAW: The Department of Agriculture and Consumer Services (DACS) is charged with administration and enforcement of the bedding laws. Applicable law:

- Requires sanitization of renovated or secondhand bedding prior to sale.
- Requires that bedding manufactured in the State, or material used in manufactured bedding to be sold in the State, must be made from new materials and free of toxic materials.
- Generally prohibits storage of any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized.
- Requires tagging of all bedding sold in the State, which tags must include specific information detailed by the statutes.
- Prohibits removal, defacement, or alteration of required tags.
- Requires persons manufacturing or sanitizing bedding in the State to register with, obtain a license from, and pay a fee to DACS.

(Applicable laws do not apply to bedding sold by an owner and previous user from the owner's home directly to a purchaser for the purchaser's own personal use, unless exposed to a communicable disease)

The Commissioner of Agriculture is authorized to prohibit the sale of any bedding that is not made, sanitized, or tagged as required by law; to inspect bedding and examine records to ascertain compliance with the bedding laws; and to seize and hold for evidence any records, bedding, or material that is made, possessed, or offered for sale in violation of the bedding laws.

BACKGROUND: Prior to 2011, the bedding law was administered by DHHS, and DHHS had a right of entry under statute to enforce the bedding laws. In 2011, administration and enforcement authority over the program was transferred to DACS, but the authority giving a right of entry was inadvertently omitted.

BILL ANALYSIS: The bill gives the Commissioner the right of entry upon the premises of any place where entry is necessary to enforce the provisions of the bedding laws under the statutes. The bill provides that if consent for entry is not obtained, an administrative search and inspection warrant may be obtained for the purposes of entry.

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

S388-smrk-45(e1) Jennifer McGinnis, Staff Attorney, significantly contributed to this summary.

SENATE BILL 594

Short Title:	Require Drug Testing/Work First Benefits.	(Public)
Sponsors:	Senators J. Davis (Primary Sponsor); Allran, Brock, Cook, Hise, Jackson, Meredith, Pate, Rabin, and Randleman.	
Referred to:	Judiciary II.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DRUG SCREENING FOR APPLICANTS FOR AND RECIPIENTS OF WORK FIRST PROGRAM ASSISTANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-29.1 reads as rewritten:

"**§ 108A-29.1. ~~Substance abuse treatment required; drug~~ Drug testing required for Work First Program applicants and recipients.**

(a) ~~Each applicant or current recipient of Work First Program benefits, determined by a Qualified Professional in Substance Abuse (QPSA) or by a physician certified by the American Society of Addiction Medicine (ASAM) to be addicted to alcohol or drugs and to be in need of professional substance abuse treatment services shall be required, as part of the person's MRA and as a condition to receiving Work First Program benefits, to participate satisfactorily in an individualized plan of treatment in an appropriate treatment program. As a mandatory program component of participation in an addiction treatment program, each applicant or current recipient shall be required to submit to an approved, reliable, and professionally administered regimen of testing for presence of alcohol or drugs, without advance notice, during and after participation, in accordance with the addiction treatment program's individualized plan of treatment, follow up, and continuing care services for the applicant or current recipient.~~The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance. The cost of the drug testing is the responsibility of the individual tested. The Department shall provide notice of drug testing to each applicant or recipient. The notice shall advise the applicant or recipient that drug testing will be conducted as a condition of receiving Work First Program assistance. The applicant or recipient shall be advised that the required drug testing may be avoided if the applicant or recipient does not apply for Work First Program assistance. Dependent children under the age of 18 are exempt from the requirements of this section. The Department shall require the following:

(1) That for two-parent families, both parents comply with the drug-testing requirement.

(2) That any teen parent who is emancipated pursuant to Article 35 of Chapter 7B of the General Statutes comply with the drug-testing requirement.

(3) That each applicant or recipient be advised before testing that he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.

(4) That each applicant or recipient being tested to sign a written acknowledgement that he or she has received and understood the notice and advice provided under this subsection.

(5) That each applicant or recipient who fails a drug test understands that he or she has the right to take one or more additional tests.

(b) ~~An applicant or current recipient who fails to comply with any requirement imposed pursuant to this section shall not be eligible for benefits or shall be subject to the termination of benefits, but shall be considered to be receiving benefits for purposes of determining eligibility for medical assistance.~~For an applicant or current recipient who tests negative for controlled substances, the Department shall increase the amount of the initial Work First Program assistance by the amount paid by the applicant or recipient for the drug testing. An applicant or recipient who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive Work First Program assistance for one year from the date of the positive drug test except as provided in subsection (b1) of this section. The individual may reapply after one year. However, if the individual has any subsequent positive drug tests, the individual shall be ineligible for benefits for three years from the date of the subsequent positive drug test unless the individual reapplies pursuant to subsection (b1) of this section.

(b1) An applicant or recipient deemed ineligible may reapply for Work First Program assistance if the individual can document the successful completion of a substance abuse treatment program offered by a provider under subsection (e) of this section and licensed by the Department. The applicant or recipient who reapplies for Work First Program assistance after completion of a substance abuse program shall pass a drug test. The cost of any drug testing and substance abuse program provided under this subsection shall be the responsibility of the applicant or recipient being tested and receiving treatment. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

(c) The children of any applicant or current recipient shall remain eligible for benefits, and these benefits shall be paid to a protective payee pursuant to G.S. 108A-38.

(d) ~~An applicant or current recipient shall not be regarded as failing to comply with the requirements of this section if an appropriate drug or alcohol treatment program is unavailable.~~The Social Services Commission shall adopt rules pertaining to the testing of applicants and recipients under this section.

(e) Area mental health authorities organized pursuant to Article 4 of Chapter 122C of the General Statutes shall be responsible for administering the provisions of this section.

~~(f) The requirements of this section may be waived or modified as necessary in the case of individual applicants or recipients to the degree necessary to comply with Medicaid eligibility provisions.~~"

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

SENATE BILL 594:
Require Drug Testing/Work First Benefits

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 8, 2013
Introduced by:	Sen. J. Davis	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 594 would require drug testing for applicants and recipients of the Work First Program.***

CURRENT LAW: Through Work First, North Carolina's Temporary Assistance for Needy Families (TANF) program, parents can get short-term training and other services to help them become employed and self-sufficient. The Work First Program is governed by Part 2 of Article 2 of Chapter 108A of the General Statutes (G.S. 108A-27 through 108A-39). G.S. 108A-29.1 requires that each applicant or recipient of Work First Program benefits who is determined by a substance abuse professional or physician to be addicted to alcohol or drugs and to be in need of professional substance abuse treatment services must participate satisfactorily in an individualized plan of treatment. As a mandatory component of participation in an addiction treatment program, an applicant or recipient is required to submit to testing for the presence of alcohol or drugs.

BILL ANALYSIS: Senate Bill 594 would direct the Department of Health and Human Services (DHHS) to require a drug test to screen each applicant or recipient of Work First Program assistance. Dependent children under the age of 18 would be exempt from the drug testing requirement. For two-parent families, each parent would be required to comply with the drug testing requirement. The cost of the drug testing would be the responsibility of the individual tested. If the person tests negative, the initial payment of benefits would include reimbursement of the cost of the drug testing.

A person who tests positive would be ineligible to receive Work First Program assistance for a period of one year from the date of the positive drug test, and may reapply after one year; a person who has a subsequent positive drug test would be ineligible for a period of three years from the date of the subsequent drug test. However, a person would be eligible to reapply with documentation of successful completion of a substance abuse treatment program offered by an area mental health authority and licensed by DHHS. The applicant who reapplies after completion of a treatment program would be required to pass a drug test, and would be responsible for the cost of the test. A person may only reapply one time based on completion of a substance abuse treatment program. The Social Services Commission would be required to adopt rules pertaining to the testing of applicants and recipients.

The children of any applicant or current recipient would remain eligible for benefits, and those benefits would be paid to a protective payee. The bill would eliminate a provision allowing a person who is ineligible for benefits or subject to the termination of benefits due to substance abuse to be considered as receiving benefits for purposes of determining eligibility for medical assistance. It would also eliminate a provision that states an applicant or current recipient will not be regarded as failing to comply if an appropriate drug or alcohol treatment program is unavailable, and that provides for waiver or modification of the requirements to comply with Medicaid eligibility provisions.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. _____ DATE 4-9-13

S. B. No. 594 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Daniel
Sen.)

1 moves to amend the bill on page 1, line 23
2 ( ) WHICH CHANGES THE TITLE
3 by inserting a comma after the word "assistance"
4 and inserting before the period the following
5 "and that the results of the tests remain
6 confidential and will not be released to
7 law enforcement"
8
9
10
11
12
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17
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19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-9 TIME: 10 Am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Morgan Bass	Farmville	Davis D.
2 Shyheem Carmon	Hookerton	Davis D.
3 Brett Shackelford	Snow hill	Davis D.
4 Jamar Jones	Snow Hill	Davis, D.
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/09/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee — **Name of Committee**

April 9, 2013 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jordan Paschal	Intern Rep. Hamilton
Chris Kardish	Associated Press
David Lockhear	DHHS / DSS
Kristin Bogren	DHHS/DSS
Alex Badyer	CSS
Brian Albritton	ABC of the Carolinas
Sarah Preston	ACLU-NC
Brandy Bynum	AFC NC
Bruce Kepley	Self

VISITOR REGISTRATION SHEET

Senate JII Committee — April 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
David McLeod	NCDACS
Joy Hicks	NCDA
Rick Martinez	NC Newspaper —
Bill Rowe	NC Justice Center
Lee Dorsey	Conference of DAs
[illegible]	MWC
Rebecca Troutman	NCIACC
Lou Ann Harris	LAHA
Mark Blue	NCBAA
Tim Lobe	self

Senate Committee on Judiciary II
Thursday, April 11, 2013, 12:00 PM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 222	Revise Controlled Substances Reporting.	Senator Allran Senator Bingham
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

Adjournment

Senate Judiciary II Committee
Thursday, April 11, 2013
Room 1124 LB, 12:00 p.m.

Minutes

The Senate Judiciary II Committee met at 12:00 p.m. on Thursday, April 11, 2013 in room 1027 of the Legislative Building. Morgan Bass of Farmville, Chandria Boykin of Winterville, Brett Shackleford of Snow Hill, Shyheem Carmon of Hookerton, J.D. Salamido of Cary and Emma Fowler of Nakina served as pages. Senator Allran and Senator Daniel presided as chairs.

S.B. 222 – Revise Controlled Substances

Senator Allran was recognized to explain the bill and Senator McKissick moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would amend the list of dispensers of controlled substances who are exempt from entering information into the Controlled Substances Reporting System, and makes other changes relating to System information and its accessibility. Bill Bronson, Drug Control Unit Program Director, DHHS, was recognized to answer questions and further explain the PCS. Bryant Blankenship, NC Medical Board attorney, and Amy Whitehead, NC Medical Society, were recognized to speak in favor of the PCS. William Potter was recognized to express concerns about the rulemaking process and its lengthy time frame. Dave Kalbacker, NC Board of Nursing, has questions regarding the bill. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 676 – 10 Year Min for 2nd Gun Felony Conviction

Senator Daniel was recognized to explain the bill. Senator Randleman moved to adopt the PCS for discussion and the motion carried. The PCS would create the status offense of "armed habitual felon" that would be applicable to any person who has been convicted of or pled guilty to one or more prior firearm-related felony offenses. Charles Taylor, Sanford City Councilman, was recognized to answer questions. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 12:44 p.m.

Senator Austin Allran
Chair

Senator Warren Daniel
Chair

DeAnne Mangum
Committee Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 11, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 222	Revise Controlled Substances Reporting.	Senator Allran Senator Bingham
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, April 15, 2013

Senator Daniel,
submits the following with recommendations as to passage:

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

SB **222** Revise Controlled Substances Reporting.

Draft Number:	S222-PCS75278-RK-21
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Austin Allran will handle SB 222

Principal Clerk ____
Reading Clerk ____

Corrected #1: The committee will meet at noon.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 11, 2013	12:00 PM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 222	Revise Controlled Substances Reporting.	Senator Allran Senator Bingham
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 222*
PROPOSED COMMITTEE SUBSTITUTE S222-CSRK-21 [v.7]
4/10/2013 11:57:00 AM

Short Title: Revise Controlled Substances Reporting. (Public)

Sponsors:

Referred to:

March 7, 2013

A BILL TO BE ENTITLED

AN ACT TO REVISE THE NORTH CAROLINA CONTROLLED SUBSTANCES REPORTING SYSTEM ACT, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.72 reads as rewritten:

"**§ 90-113.72. Definitions.**

The following definitions apply in this Article:

(1) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(2) "Controlled substance" means a controlled substance as defined in G.S. 90-87(5).

(3) "Department" means the Department of Health and Human Services.

(4) "Dispenser" means a person who delivers a Schedule II through V controlled substance to an ultimate user in North Carolina, but does not include any of the following:

a. A licensed hospital or long-term care pharmacy that dispenses such substances for the purpose of inpatient administration.

~~b. A person authorized to administer such a substance pursuant to Chapter 90 of the General Statutes.~~

c. A wholesale distributor of a Schedule II through V controlled substance.

d. A person licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes.

(5) "Ultimate user" means a person who has lawfully obtained, and who possesses, a Schedule II through V controlled substance for the person's own use, for the use of a member of the person's household, or for the use of an animal owned or controlled by the person or by a member of the person's household."

SECTION 2. G.S. 90-113.73 reads as rewritten:

"**§ 90-113.73. Requirements for controlled substances reporting system.**

(a) The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser ~~that~~ who is unable to submit prescription

information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted. The dispenser shall report the information required under this section ~~on a monthly basis for the first 12 months of the Controlled Substances Reporting System's operation, and twice monthly thereafter, until January 2, 2010, at which time dispensers shall report no later than seven days~~ no later than the close of business three business days after the day when the prescription ~~is dispensed~~was delivered, beginning the next day after the delivery date; however, dispensers are encouraged to report the information no later than 24 hours after the prescription was delivered. The information shall be submitted in a format as determined annually by the Department based on the format used in the majority of the states operating a controlled substances reporting system.

(b) The Commission shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

(1) The dispenser's DEA number.

(2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:

a. Full address, including city, state, and zip code,

b. Telephone number, and

c. Date of birth.

(3) The date the prescription was written.

(4) The date the prescription was filled.

(5) The prescription number.

(6) Whether the prescription is new or a refill.

(7) Metric quantity of the dispensed drug.

(8) Estimated days of supply of dispensed drug, if provided to the dispenser.

(9) National Drug Code of dispensed drug.

(10) Prescriber's DEA number.

(11) Method of payment for the prescription.

(c) A dispenser shall not be required to report instances in which a controlled substance is provided directly to the ultimate user and the quantity provided does not exceed a 48-hour supply."

SECTION 3. G.S. 90-113.74 reads as rewritten:

"**§ 90-113.74. Confidentiality.**

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. Except as otherwise provided by this section, prescription information shall not be disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

(b1) The Department may review the prescription information data in the controlled substances reporting system and upon review may:

(1) Notify practitioners that a patient may have obtained prescriptions for controlled substances in a manner that may represent abuse, diversion of controlled substances, or an increased risk of harm to the patient.

(2) Report information regarding the prescribing practices of a practitioner to the agency responsible for licensing, registering or certifying the practitioner

pursuant to rules adopted by the agency as set forth below in subsection (b2) of this section.

(b2) In order to receive a report pursuant to subdivision (2) of subsection (b1) of this section, an agency responsible for licensing, registering or certifying a practitioner with prescriptive or dispensing authority shall adopt rules setting the criteria by which the Department may report the information to the agency. The criteria for reporting established by rule shall not establish the standard of care for prescribing or dispensing, and it shall not be a basis for disciplinary action by an agency that the Department reported a practitioner to an agency based on the criteria.

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

(1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients. A person authorized to receive data pursuant to this paragraph may delegate the authority to receive the data to other persons working under his or her direction and supervision, provided the Department approves the delegation.

(2) An individual who requests the individual's own controlled substances reporting system information.

(3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication and who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.

(4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.

(5) To a court pursuant to a lawful court order in a criminal action.

(6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.

(7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

...."

SECTION 4. G.S. 90-113.75 reads as rewritten:

"**§ 90-113.75. Civil penalties; other remedies; immunity from liability.**

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this ~~section~~ Article or a rule adopted pursuant to this ~~section~~ Article shall be assessed a civil penalty by the Department not to exceed ~~five thousand dollars ($5,000)~~ten thousand dollars ($10,000) per violation. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes. The Commission shall adopt rules establishing the factors to be considered in determining the amount of the penalty to be assessed.

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this ~~section~~ Article or a rule adopted pursuant to this Article may bring an action against any person or entity who has intentionally, knowingly, or negligently released confidential information or records concerning the individual for either or both of the following:

(1) Nominal damages of one thousand dollars ($1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the individual.

(c) A health care provider licensed, or an entity permitted under this Chapter that, in good faith, makes a report or transmits data required or allowed by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of making the report or transmitting the data."

SECTION 5. G.S. 90-5.2 is amended by adding a new subsection to read:

"(a1) The Board shall make e-mail addresses and facsimile numbers reported pursuant to G.S. 90-5.2(a)(7) available to the Department of Health and Human Services for use in the North Carolina Controlled Substance Reporting System established by Article 5E of this Chapter."

SECTION 6. Sections 1 and 2 of this act become effective on January 1, 2014, and apply to prescriptions delivered on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 222:
Revise Controlled Substances Reporting

2013-2014 General Assembly

Committee:	Senate Re-ref to Judiciary II. If fav, re-ref to Finance	**Date:**	April 2, 2013
Introduced by:	Sens. Allran, Bingham	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S222-CSRK-21		Committee Counsel

SUMMARY: ***This act amends the list of dispensers of controlled substances who are exempt from entering information into the Controlled Substances Reporting System (CSRS), and makes other changes relating to System information and its accessibility.***

[As introduced, this bill was identical to H173, as introduced by Reps. Horn, Brisson, Fulghum, Hollo, which was heard in House Judiciary Subcommittee B on April 10th, with referral to the House Health and Human Services Committee.]

BILL ANALYSIS: The PCS makes the changes to the bill that are underlined below:

- Removes the current CSRS reporting exemption given to physicians registered as dispensers of controlled substances.
- Exempts persons licensed to practice veterinary medicine from reporting controlled substance dispensing information into the CSRS.
- Adds a provision that exempts dispensers from reporting instances where a controlled substance is provided directly to the ultimate user, and the quantity provided does not exceed a 48-hour supply.
- Deletes from bill the following information for input into the CSRS: specialty of practitioner and documentation of photographic identification presented.
- Provides that the deliverer of a controlled substance has three business days to provide information into the CSRS (24 hour input encouraged).
- Authorizes the Department to review CSRS information in order to: (i) notify practitioners that a patient may have obtained prescriptions in a manner that may represent abuse, diversion, or increased risk of harm, and (ii) report information regarding the prescribing practices of a practitioner to the agency responsible for licensing, registering, or certifying the practitioner, pursuant to agency-adopted rules.
- Requires an agency responsible for licensing, registering or certifying a practitioner with prescriptive or dispensing authority receiving reports from the Department to adopt rules setting the Department's reporting criteria. The reporting criteria cannot establish the standard of care for prescribing or dispensing, nor can be a basis for disciplinary action by the agency that the Department reported in accordance with the criteria.
- Increases penalties for persons who unlawfully obtain information from the CSRS; requires the Commission to adopt rules to establish factors for penalty determinations.

(over)

EFFECTIVE DATE: The reporting procedures amended in the act are effective January 1, 2014; the remainder of the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 676
PROPOSED COMMITTEE SUBSTITUTE S676-CSRV-19 [v.1]
4/10/2013 1:47:59 PM

Short Title: 10 Yr. Min for 2nd Gun Felony Conviction. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF A SECOND FELONY INVOLVING THE DISPLAY OR USE OF A FIREARM MAY BE INDICTED AS AN ARMED HABITUAL FELON AND SENTENCED TO A MINIMUM OF TEN YEARS.

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 3D.
"Armed Habitual Felon.

"**§ 14-7.35. Definitions.**

The following definitions apply in this Article:

(1) "Convicted." – The person has been adjudged guilty of or has entered a plea of guilty or no contest to the firearm-related felony.

(2) "Firearm-related felony." – Any felony committed by a person in which the person used or displayed a firearm while committing the felony.

(3) "Status offender." – A person who is an armed habitual felon as described in G.S. 14-7.36.

"**§ 14-7.36. Armed habitual felon.**

Any person who has been convicted of or pled guilty to one or more prior firearm-related felony offenses in any federal court or state court in the United States, or combination thereof, is guilty of the status offense of armed habitual felon and may be charged with that status offense pursuant to this Article.

This Article does not apply to a second firearm-related felony unless it is committed after the conviction of the first firearm-related felony. For purposes of this Article, firearm-related felonies committed before the person is 18 years of age shall not constitute more than one firearm-related felony. Any firearm-related felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a firearm-related felony.

"**§ 14-7.37. Punishment.**

When any person is charged with a firearm-related felony and is also charged with being a status offender, the person must, upon conviction, be sentenced and punished as a status offender as provided by this Article.

"**§ 14-7.38. Charge of status offense as an armed habitual felon.**

(a) The district attorney, in the district attorney's discretion, may charge a person as a status offender pursuant to this Article. To sustain a conviction of a person as a status offender, the person must be charged separately for the principal firearm-related felony and for the status offense of armed habitual felon. The indictment charging the defendant as a status offender

shall be separate from the indictment charging the person with the principal firearm-related felony.

(b) An indictment that charges a person with being a status offender must set forth all of the following information regarding the prior firearm-related felony:

(1) The date the offense was committed.

(2) The name of the state or other sovereign against whom the offense was committed.

(3) The dates that the plea of guilty was entered into or conviction returned in the offense.

(4) The identity of the court in which the plea or conviction took place.

(c) No defendant charged with being a status offender in a bill of indictment shall be required to go to trial on the charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period.

"**§ 14-7.39. Evidence of prior convictions of firearm-related felonies.**

In all cases in which a person is charged under the provisions of this Article with being a status offender, the record of prior conviction of the firearm-related felony shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of a former firearm-related felony. 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.

"**§ 14-7.40. Verdict and judgment.**

(a) When an indictment charges a person with a firearm-related felony as provided by this Article and an indictment also charges that the person is a status offender, the defendant shall be tried for the principal firearm-related felony as provided by law. The indictment that the person is a status offender shall not be revealed to the jury unless the jury shall find that the defendant is guilty of the principal firearm-related felony with which the defendant is charged.

(b) If the jury finds the defendant guilty of the principal firearm-related felony, the bill of indictment charging the defendant as a status offender may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of status offender were a principal charge.

(c) If the jury finds that the defendant is a status offender, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a status offender, the trial judge shall pronounce judgment on the principal firearm-related felony offense as provided by law.

"**§ 14-7.41. Sentencing of armed habitual felon.**

(a) A person who is convicted of a firearm-related felony and is also convicted of the status offense must, upon conviction or plea of guilty under indictment as provided in this Article, be sentenced as a Class C felon (except where the felon has been sentenced as a Class A, B1, or B2 felon). Notwithstanding any other provision of law, a person sentenced under this Article shall serve either (i) a minimum term of imprisonment of 120 months and a maximum term of 156 months or (ii) the minimum and maximum terms of imprisonment that would be imposed for the principal firearm-related felony pursuant to G.S. 15A-1340.17, whichever is greater.

(b) In determining the prior record level, any conviction used to establish a person's status as an armed habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) A conviction as a status offender under this Article shall not constitute commission of a felony for the purpose of either Article 2A or Article 2B of Chapter 14 of the General Statutes."

SECTION 2. Part 1 of Article 81B or Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.12A. Sentencing court to include in judgment whether firearm was used.**

When a person is convicted of a felony in which the person used or displayed a firearm while committing the felony, the sentencing court shall include that fact when entering the judgment that imposes the sentence for the felony conviction."

SECTION 3. This act becomes effective December 1, 2013, and applies to any offense that occurs on or after that date and that is the principal firearm-related felony offense for a charge as an armed habitual felon. Section 2 of the bill applies to any judgment entered for a felony conviction on or after that date.

SENATE BILL 676:
10 Yr. Min for 2nd Gun Felony Conviction

2013-2014 General Assembly

Committee:	Senate Ref to Judiciary II. If fav, re-ref to Finance	**Date:**	April 10, 2013
Introduced by:	Sen. Daniel	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S676-CSRV-19		

SUMMARY: ***Senate Bill 676 would create the status offense of "armed habitual felon" that would be applicable to any person who has been convicted of or pled guilty to one or more prior firearm-related felony offenses.***

CURRENT LAW: The fact that a defendant was armed with or used a deadly weapon at the time he or she committed the crime is currently an aggravating factor for purposes of sentencing.

G.S. 15A-1340.16A provides for a 60-month increase in the minimum and maximum terms of imprisonment for a defendant convicted of a Class A through Class E felony, if the defendant used, displayed, or threatened to use or display a firearm or other deadly weapon during commission of the felony.

BILL ANALYSIS: **Section 1** of the bill would create the status offense of "armed habitual felon" that would be applicable to any person who has been convicted of or pled guilty to one or more prior firearm-related felony offenses. The district attorney would have the discretion to charge a person as an armed habitual felon.

The bill provides for the defendant to be charged separately for the principal firearm-related felony and for the status offense of armed habitual felon. The person would first be tried for the principal firearm-related felony, and the status offense would not be revealed to the jury unless the person is found guilty of the principal firearm-related felony. If the person is found guilty of the principal felony, the armed habitual felon charge would then be presented to the jury. If the jury finds the defendant is an armed habitual felon, the defendant would be sentenced as a Class C felon – unless the principal firearm-related felony was a Class A, B1, or B2 felony. A person sentenced as an armed habitual felon would serve a minimum term of imprisonment of 10 years and a maximum term of 13 years, or the minimum and maximum terms of imprisonment that would be imposed for the principal firearm-related felony--whichever is greater. When sentencing a person for the status offense of armed habitual felon, the conviction used to establish the person's status as an armed habitual felon would not count towards the person's prior record level. Sentences imposed for armed habitual felon status would run consecutively with, and begin at the expiration of, any sentence already being served by the defendant.

Section 2 of the bill would require that when a defendant is convicted of a felony in which he or she used a firearm, the sentencing court must include that fact when entering a judgment imposing a sentence for that conviction.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date and that is the principal firearm-related felony offense that is the basis for an armed habitual felon charge. Section 2 would apply to judgments entered on or after the effective date.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/11/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. JUSTIN OWENS
5. _____
6. _____

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-11 TIME: Noon

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Morgan Bass	Farmville	D. Davis
2 Chandria Boykin	Winterville	D-Davis
3 Brett Shackleford	Snow Hill	D. Davis
4 Shyheem Carmon	Hookerton	D. Davis
5 JD Salamidis	Cary	Apodaca
6 Emma Fowler	Nakina	Walters
7 ~~Ruth Smith~~	~~Wilmington~~	~~Goolsby~~
8 Ruth Smith	Wilmington	Goolsby
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 11, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Halbachter	N.C. Board of Nursing
Evelyn Hawthorne	NCAP
Jessica Jones	WMC
Amy Whited	NCMS
Brian Blankenship	NCMTA
Kimberly Robinson	NCRMA
George Smith	NP
Brent Woodcox	Sen. Rucho
Sarah Wolfe	MWC LLC
William Bronson	DHHS DMH DD SAS
Elizabeth Thaler	CFTF

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 11, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Charles Taylor	Sanford City Council 605 Tickwater Dr Sanford NC 27330
Ronnie Yarborough	Sanford Police Dept 225 East Weatherspoon St
[illegible]	NCPTA & NCDS
[illegible]	NWC
John DelGiorno	Brubaker+Assoc,
Stephanie Hanco	WPTF
[illegible]	NCRMA
John Madler	NC Sentencing Commission
Annaliese Dolph	Dolph Law
Andrew Cagle	NC Sheriffs' Assn.
Peg Dorer	Conference of DAs
Joel Maynard	NCAFP

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 11, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mike Lancaster	CCNC
Thomas Caves, Jr.	NC SBI
Christy Agner	NC SBI
Sarah Preston	ACLU-NC
Rob Lamm	RLK

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 11, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
TARA FIELDS	Benchmarks
Karen McLeod	Benchmarks

Senate Committee on Judiciary II
Tuesday, April 16, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 75	Kilah's Law/Increase Child Abuse Penalties.	Representative Horn Representative Stevens Representative Arp Representative Glazier

Adjournment

Senate Judiciary II Committee
Tuesday, April 16, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, April 16, 2013 in room 1124 of the Legislative Building. Colton Estes of Matthews, Andrew Pelletier of Creswell, and Cole Hartsell of Winston-Salem served as pages. Senator Allran and Senator Daniel presided as chairs.

H.B. 75 – Kilah's Law/Increase Child Abuse Penalties

Senator Curtis, Representative Horn, and Representative Stevens were recognized to explain the bill. It would increase the penalties for child abuse and would provide for a recordkeeping system to identify child abuse offenders. Hal Pell, an Attorney with the Research Division, was recognized to explain the fiscal impact and to answer questions. Senator Cook moved for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note is attached.

The meeting adjourned at 10:16 a.m.

Senator Austin Allran
Chair

Senator Warren Daniel
Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 16, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 75	Kilah's Law/Increase Child Abuse Penalties.	Representative Horn Representative Stevens Representative Arp Representative Glazier

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, April 16, 2013

Senator Daniel,
submits the following with recommendations as to passage:

FAVORABLE

HB **75** Kilahs Law/Increase Child Abuse Penalties.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **452** Jurisdictional Amts/Arbitration/Sm Claims Ct..

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator David Curtis will handle HB 75
Senator Thomas Goolsby will handle SB 452

HOUSE BILL 75

Short Title:	Kilah's Law/Increase Child Abuse Penalties.	(Public)
Sponsors:	Representatives Horn, Stevens, Arp, and Glazier (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee B, if favorable, Appropriations.	

February 7, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR VARIOUS CRIMINAL OFFENSES OF FELONY CHILD ABUSE AND TO REQUIRE THAT THE OFFICIAL RECORD OF A DEFENDANT CONVICTED OF CHILD ABUSE OR OTHER ASSAULTS AGAINST A MINOR INDICATES THAT THE OFFENSE INVOLVED CHILD ABUSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a ~~Class E~~ Class D felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the child is guilty of child abuse and shall be punished as a ~~Class E~~ Class D felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon the child is guilty of a ~~Class E~~ Class D felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a ~~Class C~~Class B2 felony.

(a4) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

(a5) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a ~~Class H~~ Class G felony if the act or omission results in serious physical injury to the child.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) Abandonment of an infant less than seven days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant.

(d) The following definitions apply in this section:

(1) 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.

(2) Serious physical injury. – Physical injury that causes great pain and suffering. The term includes serious mental injury."

SECTION 2. G.S. 15A-1382.1 reads as rewritten:

"**§ 15A-1382.1. Reports of disposition; domestic violence; <u>child abuse;</u> sentencing.**

(a) When a defendant is found guilty of an offense involving assault, communicating a threat, or any of the acts as defined in G.S. 50B-1(a), the presiding judge shall determine whether the defendant and victim had a personal relationship. If the judge determines that there was a personal relationship between the defendant and the victim, then the judge shall indicate on the form reflecting the judgment that the case involved domestic violence. The clerk of court shall insure 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 domestic violence.

<u>(a1) When a defendant is found guilty of an offense involving child abuse or is found guilty of an offense involving assault or any of the acts as defined in G.S. 50B-1(a) and the offense was committed against a minor, then the judge shall indicate on the form reflecting the judgment that the case involved child abuse. 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 child abuse.</u>

(b) Repealed by Session Laws 2012-39, s. 2, effective December 1, 2012, and applicable to defendants placed on probation on or after that date.

(c) The following definitions apply to this section:

(1) "An offense involving assault" includes any offense where an assault occurred, whether or not the conviction is for an offense under Article 8 of Chapter 14 of the General Statutes.

(2) "Inquiry" shall include any lawful review of the criminal records of persons convicted of an offense in this State, whether by law enforcement personnel or by private individuals.

(3) "Personal relationship" is as defined in G.S. 50B-1(b)."

SECTION 3. This act becomes effective December 1, 2013. Section 1 of this act applies to offenses committed on or after that date. Section 2 of this act applies to judgments entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 75 (First Edition)

SHORT TITLE: Kilah's Law/Increase Child Abuse Penalties.

SPONSOR(S): Representatives Glazier, Stevens, Horn, and Arp

FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: $371,092 in FY 2013-14 and $742,184 annually in subsequent years
- Indigent Defense Services: $101,560 increased costs in superior court without a trial
  $548,300 increased costs in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of $980- $1,325 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of HB 75 amends existing G.S. 14-318.4, Child abuse a felony, to increase, by one classification, the felony class of each offense listed in that section. The one exception is the serious bodily injury offense in subsection (a4) of the statute, which would remain a Class E felony. Section 2 amends G.S. 15A-1382.1, Reports of disposition; domestic violence; child abuse; sentencing; to require a special entry on the judgment form and on the automated court record when the court finds that the defendant committed an offense involving child abuse, an offense involving assault on a minor, or an offense involving an act of domestic violence against a minor, so that any inquiry into the defendant's criminal record will reflect that the offense involved child abuse. This bill becomes effective December 1, 2013. Section 1 applies to offenses committed on or after that date; Section 2 applies to judgments entered on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA

implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

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

In fiscal year 2011-12, 161 defendants were charged with intentionally inflicting any serious physical injury on a child. The AOC estimates the average cost to the court for each case would be $3,465.

AOC further reports that in FY 2011-12, three defendants were charged with committing, permitting, or encouraging any act of child prostitution. Of these, none were convicted. The AOC estimates the average cost to the court for each case would be $3,465.

AOC reports that 32 defendants were charged with committing or allowing the commission of any sexual act with a child in FY 2011-12. Of these, five were convicted. AOC estimates the average cost to the court for each case would be $3,465.

AOC reports that in FY 2011-12, approximately 84 defendants were charged with intentionally inflicting any serious bodily injury on a child resulting in permanent or protracted loss or impairment. Of these, 12 were convicted. AOC estimates the average cost to the court for each case would be $8,730.
AOC reports that in calendar year FY 2011-12, 12 defendants were charged with a willful act or grossly negligent omission of a child resulting in serious physical injury. Of these, six were convicted. AOC estimates the average cost to the court for each case would be $752. The following table illustrates the effect of the new bill on AOC costs for the first full year of implementation:

Table 1: Potential Impact of Kilah's Law, Section 1

General statute	Offense description	Existing charge class (felony)	New charge class (felony)	Number of defendants in FY 2012	Monetary increase per case	Total monetary increase
14-318.4(a)	Intentionally inflict serious injury	E	D	161	$1,847	$297,367
14-318.4(a1)	Commit, permit, or encourage any act of prostitution	E	D	3	$1,847	$5,541
14-318.4(a2)	Commit or allow the commission of any sexual act	E	D	32	$1,847	$59,104
14-318.4(a3)	Intentionally inflict any serious bodily injury resulting in permanent or protracted loss or impairment	C	B2	84	$4,490	$377,160

14-318.4(a5)	Willful act or grossly negligent omission resulting in serious physical injury	H	G	12	$251	$3,012
					Total Annual Estimate:	**$742,184**

AOC estimates that Section 2 of this bill will require updating the offense classification of the five offenses specified in this Bill, costing $79,950.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. Since the majority of these cases will go to Superior Court, the District Court costs were not calculated. In superior court, IDS estimates that the increased cost of a PAC attorney per case for a D level Class Offense would be $281 if the case does not go to trial and $1,287 if it does.

IDS further estimates that the increased cost of a PAC attorney per case in Superior Court for a new B2 level Class Offense would be $554 if the case does not go to trial and $3560 if it does.

IDS further estimates that the increased cost of a PAC attorney per case in Superior Court for a new G level Class Offense would be $88 if the case does not go to trial and $344 if it does. The following table illustrates the effect of the new bill on IDS per case costs:

General Statute	Current Felony Class	Proposed Felony Class	Per Case Cost Increase for PDs	Per Case Cost Increase for Contractors	Per Case Cost Increase for PAC*
14-318(a)	E	D	Not quantifiable	$707.22	$281 non-trial $1,287 trial
14-318.4(a1)	E	D	Not quantifiable	$707.22	$281 non-trial $1,287 trial
14-318(a2)	E	D	Not quantifiable	$707.22	$281 non-trial $1,287 trial
14-318(a3)	C	B2	Not quantifiable	$0	$554 non-trial $3,560 trial
14-318(a5)	H	G	Not quantifiable	$0	$88 non-trial $344 trial

Assuming the offenders charged in 2012 had been prosecuted under this proposed legislation, the cost to the judicial system would have increased by the following amounts. The increased cost of a PAC attorney for all additional D level Class Offenses would be $55,076 if no cases go to trial (196 offenders times $281 non-trial costs) and $252,252 if they all go to trial (196 offenders times $1,287 non-trial costs).

The increased cost of a PAC attorney for all additional B2 level Class Offenses would be $45,428 (82 offenders times $554 non-trial costs) if no cases go to trial and $252,252 if they all go to trial (82 offenders times $3,560 non-trial costs).

The increased cost of a PAC attorney for all additional G level Class Offenses would be $1,056 (12 offenders times $88 non-trial costs) if no cases go to trial and $4,128 if they all go to trial (12 offenders times $344 non-trial costs).

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add more than 32 inmates to the prison system by the end of FY 2014-15.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	*17*	*32*	*32+**	*32+**	*32+**
5. Additional Beds Required					

* The Sentencing and Policy Advisory Commission provides two year threshold projections. Projections beyond the two year horizon are estimates.

In addition, impact on the prison population will occur if Class C convictions become Class B2 convictions under the proposed statute because of the longer average estimated time served (183 months compared to 81 months for Class C). No additional prison beds would be needed in the short term due to the long sentence lengths. Long-term impact on the prison population would begin in year six due to the longer sentence lengths for Class B2 felony convictions, and would continue as individuals convicted of this offense accumulate in the prison population over the years.

Department of Public Safety – Community Correction Section

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[2] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 100% of Class D felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1325 per offender ($3.63 per day times 365 days).[3]

In FY 2011-12, 100% of Class B2 felony offenders received active sentences. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1325 per offender ($3.63 per day times 365 days).[4]

In FY 2011-12, 42% of Class G felony offenders received active sentences; 58% received intermediate sentences; and none received community punishments. All active sentences result in 9 months of post-release supervision (PRS). The average length of intermediate punishment imposed for this offense class was 31 months. Therefore, at a minimum, one conviction resulting from Subsection (a5) of this bill will require at least nine months of PRS. The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5]

SOURCES OF DATA: Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

[2] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

[3] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[4] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Maggie Morrissey

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: February 26, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 75:
Kilah's Law/Increase Child Abuse Penalties

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 16, 2013
Introduced by:	Reps. Horn, Stevens, Arp, Glazier	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act would increase the penalties for child abuse, and provides for a recordkeeping system that identifies child abuse offenders. The penalty increases become effective December 1, 2013, and apply to offenses committed on or after that date; the child abuse designation on court records is effective for judgments entered on or after December 1, 2013.***

[As introduced, this bill was identical to S70, as introduced by Sens. Tarte, Tucker, Curtis, which is currently in Senate Appropriations/Base Budget.]

BILL ANALYSIS:

Section 1

(1) Subsections (a), (a1) and (a2)

- Increases the penalty from a Class E to a Class D felony for a parent or person caring for a child under 16, who intentionally inflicts serious physical injury upon the child, or assaults the child resulting in serious physical injury.
- Increases the penalty from a Class E to a Class D felony for a parent or person caring for a child under 16, who commits, permits, or encourages an act of prostitution with or by the child.
- Increases the penalty from a Class E to a Class D felony for a parent or legal guardian who commits or allows the commission of a sexual act upon a child under 16.

The current Class E felony gives the court the option to sentence the defendant to a minimum sentence of active time in prison in the range of 20 to 25 months, but also allows the court to sentence the prisoner to an intermediate sanction. By increasing the penalty to a Class D, the court must sentence the defendant to active time, with a minimum presumptive sentence of between 51 and 64 months for a first offender.

(2) Subsection (a3)

- Increases the penalty from a Class C to a Class B2 felony for a parent or person caring for a child under 16 who (i) intentionally inflict serious bodily injury upon the child, or (ii) assaults the child resulting in serious bodily injury or in permanent or protracted loss or impairment of any mental or emotional function.

For a Class C felony, the court must sentence the offender to active time. The minimum presumptive range is 58-73 months. The minimum presumptive range for a Class B2 offense is 125 to 157 months; consequently, the increase will allow for a sentence which could be more than twice as long as that which could be adjudged at the Class C level.

The North Carolina Sentencing and Policy Advisory Commission has created an advisory felony lassification system. The current classification schedule provides that a Class B offense is one that

results in "serious debilitating long-term personal injury." The last portion of Subsection (a3) provides the Class B2 felony designation for an offense that causes permanent or protracted loss or impairment; consequently, increasing the penalty for this portion of Subsection (a3) would be consistent with the Sentencing Commission criteria. Generally, causing "serious bodily injury" (without long-term effects) is a Class E felony; the portion of Subsection (a3) that provides for a Class B2 designation for causing serious bodily injury would thus not be consistent with the criteria. However, the imposition of a more severe sanction based on the nature of the relationship between the perpetrator and the victim (in this instance, caretaker and child) are comparable to other provisions where the legislature has imposed more severe sanctions; e.g., assault causing serious injury is a Class A1 misdemeanor; an assault on a handicapped person causing serious injury is a Class F felony.

(3) Subsection (a5)

- Increases the penalty from Class H to Class G for willful acts or grossly negligent omissions that cause serious bodily injury. The Sentencing Commission criteria provides for a Class F penalty where an act results in significant personal injury. The minimum range for Class H is 5-6 months, with the option of community punishment, intermediate sanction, or active time. The available sentences for a Class G felony include intermediate sanctions or active time, with a 10-13 months minimum presumptive range.

Section 2

The act provides that if a defendant is found guilty of child abuse, or an act of domestic violence against a minor, then the court shall indicate on the judgment form that the offense involved child abuse. Inquiries into the defendant's criminal record would reflect that he or she had been convicted of an offense involving child abuse.

EFFECTIVE DATE: This act becomes effective December 1, 2013; Section 1 applies to offenses committed on or after that date and Section 2 applies to judgments entered on or after that date

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-16 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Colton Estes	Matthews	Tarte
2 Andru Pelletier	Creswell	Jenkins
3 Cole Hartsell	Winston ~~Salem~~ Salem	Brunstetter
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/16/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 18, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Kardish	AP
John Madler	NC Sentencing Commission

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 18, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lynn Tennant	Sen Curtis' Ofc
Laurie Payne	GA
Andrew Tripp	GA staff

Senate Committee on Judiciary II
Thursday, April 18, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 149	Caylee's Law/Report Missing Children.	Rep. Hastings Rep. J. Bell Rep. Jordan Rep. Schaffer

Adjournment

Senate Judiciary II Committee
Thursday, April 18, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, April 18, 2013 in room 1124 of the Legislative Building. Maranda Jodd of Holly Springs, Candace Brown of Raleigh, Karen Metts of Trenton, and Treston Farrington of Holly Springs served as pages. Senator Daniel presided as chair.

H.B. 149 – Caylee's Law/Report Missing Children

Representative Jordan, Representative Schaffer, and Brenda Carter, an Attorney with the Research Division, were recognized to explain the bill. It would create the criminal offense of failure to report the disappearance of a child to law enforcement, and make failure to report a child as missing a grossly negligent omission that could subject the parent or other person providing care to or supervision of the minor to Class H felony punishment for child abuse if the child is seriously injured. The bill would increase the penalties for intentional concealment of the death of a child, and for making a false report to law enforcement concerning an investigation into the disappearance of a child or an investigation into certain felony offenses against child victims. The bill would also impose a criminal penalty for failure to report child abuse, neglect or dependency. Senator Allran was recognized to submit two amendments which Ms. Carter explained. The first would change the penalty provision in Section 7. The second would create a special duty for medical professionals, teachers and clergy to report child abuse with a specific penalty for failure to report by these specific professionals. Representative Schaffer responded to the amendments as positive in general, but they went beyond the initial scope of the bill and requested that they be voted down. Ms. Carter was recognized to answer questions about Representative Schaffer's concerns. Senator Daniel sent the bill to a subcommittee and appointed the following as members: Senator Allran – Chair, Senator McKissick, Senator Cook and Senator Kinnaird. A copy of the bill, the summary, and the fiscal note is attached.

The meeting adjourned at 10:45 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 18, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 149	Caylee's Law/Report Missing Children.	Representative Hastings Representative J. Bell Representative Jordan Representative Schaffer

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 149
Committee Substitute Favorable 3/6/13

Short Title: Caylee's Law/Report Missing Children. (Public)

Sponsors:

Referred to:

February 27, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO FAIL TO REPORT THE DISAPPEARANCE OF A CHILD TO LAW ENFORCEMENT, TO INCREASE THE CRIMINAL PENALTY FOR CONCEALING THE DEATH OF A CHILD, TO INCREASE THE CRIMINAL PENALTY FOR MAKING A FALSE, MISLEADING, OR UNFOUNDED REPORT TO A LAW ENFORCEMENT AGENCY OR OFFICER FOR THE PURPOSE OF INTERFERING OR OBSTRUCTING AN INVESTIGATION INVOLVING A MISSING CHILD OR CHILD VICTIM OF A CLASS A, B1, B2, OR C FELONY, AND TO MAKE IT A CLASS 1 MISDEMEANOR FOR A PERSON TO FAIL TO REPORT THE ABUSE, NEGLECT, DEPENDENCY, OR DEATH DUE TO MALTREATMENT OF A JUVENILE.

The General Assembly of North Carolina enacts:

SECTION 1. This act may be cited as "Caylee's Law."

SECTION 2. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.5. Failure to report the disappearance of a child to law enforcement; immunity of person reporting in good faith.**

(a) The following definitions apply in this section:

(1) Child. – Any person who is less than 16 years of age.

(2) Disappearance of a child. – When the parent or other person providing supervision of a child does not know the location of the child and has not had contact with the child for a 24-hour period.

(b) A parent or any other person providing care to or supervision of a child who knowingly or wantonly fails to report the disappearance of a child to law enforcement is in violation of this subsection. Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this subsection is punishable as a Class I felony.

(c) Any person who reasonably suspects the disappearance of a child and who reasonably suspects that the child may be in danger shall report those suspicions to law enforcement within a reasonable time. Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this subsection is punishable as a Class 1 misdemeanor.

(d) This section does not apply if G.S. 110-102.1 is applicable.

(e) Notwithstanding subsection (b) or (c) of this section, if a child is absent from school, a teacher is not required to report the child's absence to law enforcement officers under this section, provided the teacher reports the child's absence from school pursuant to Article 26 of Chapter 115C of the General Statutes.

(f) The felony of failure to report the disappearance of a child as required by subsection (b) of this section is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(g) Any person who reports the disappearance of a child as required by this section is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action, provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed."

SECTION 3. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the child is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon the child is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony.

(a4) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

(a5) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class H felony if the act or omission results in serious physical injury to the child.

(a6) For purposes of this section, a "grossly negligent omission" in providing care to or supervision of a child includes the failure to report a child as missing to law enforcement as provided in G.S. 14-318.5(b).

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) Abandonment of an infant less than seven days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant.

(d) The following definitions apply in this section:

(1) 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.

(2) Serious physical injury. – Physical injury that causes great pain and suffering. The term includes serious mental injury."

SECTION 4. G.S. 110-102.1(a) reads as rewritten:

"(a) ~~Operators~~ Notwithstanding G.S. 14-318.5, operators and staff, as defined in G.S. 110-86(7), and G.S. 110-91(8), or any adult present with the approval of the care provider

in a child care facility as defined in G.S. 110-86(3) and G.S. 110-106, upon learning that a child which has been placed in their care or presence is missing, shall immediately report the missing child to law enforcement. For purposes of this Article, a child is anyone under the age of ~~18.~~16."

SECTION 5. G.S. 14-401.22 reads as rewritten:

"**§ 14-401.22. Concealment of death; disturbing human remains; dismembering human remains.**

(a) ~~Any~~ Except as provided in subsection (a1) of this section, any person who, with the intent to conceal the death of a person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body is guilty of a Class I felony.

(a1) Any person who, with the intent to conceal the death of a child, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead child's body is guilty of a Class H felony. For purposes of this subsection, a child is any person who is less than 16 years of age.

(b) Any person who aids, counsels, or abets any other person in concealing the death of a person is guilty of a Class A1 misdemeanor.

(c) Any person who willfully (i) disturbs, vandalizes, or desecrates human remains, by any means, including any physical alteration or manipulation of the human remains, or (ii) commits or attempts to commit upon any human remains any act of sexual penetration is guilty of a Class I felony. This subsection does not apply to:

(1) Acts by a first responder or others providing medical care.

(2) Acts committed as part of scientific or medical research, treatment, or diagnosis.

(3) Acts performed by a licensed funeral director or embalmer consistent with standard practice.

(4) Acts committed for the purpose of extracting body parts in accordance with usual and customary standards of medical practice.

(5) Acts by a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes.

(6) Acts committed for any other lawful purpose.

(d) Any person who attempts to conceal evidence of the death of another by knowingly and willfully dismembering or destroying human remains, by any means, including removing body parts or otherwise obliterating any portion thereof, shall be guilty of a Class H felony.

(e) Any person who violates ~~subsection~~ subsection (a), (a1), or (d) of this section, knowing or having reason to know the body or human remains are of a person that did not die of natural causes, shall be guilty of a Class D felony.

(f) As used in this section, "human remains" means any dead human body in any condition of decay or any significant part of a dead human body, including any limb, organ, or bone."

SECTION 6. G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) ~~Any~~ Except as provided in subsection (b) of this section, any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, deliberately misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a Class 2 misdemeanor.

(b) A violation of subsection (a) of this section is punishable as a Class H felony if the false, deliberately misleading, or unfounded report relates to a law enforcement investigation involving the disappearance of a child as that term is defined in G.S. 14-318.5 or child victim

of a Class A, B1, B2, or C felony offense. For purposes of this subsection, a child is any person who is less than 16 years of age."

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

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

(a) Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the department's assessment of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

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

(b) Any person or institution who reasonably suspects that a juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, and fails to report the case of that juvenile as required by subsection (a) of this section is guilty of a Class 1 misdemeanor.

(c) A director of social services who receives a report of sexual abuse of a juvenile in a child care facility and who knowingly fails to notify the State Bureau of Investigation of the report pursuant to subsection (a) of this section is guilty of a Class 1 misdemeanor."

SECTION 8. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 149:
Caylee's Law/Report Missing Children

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 17, 2013
Introduced by:	Reps. Hastings, J. Bell, Jordan, Schaffer	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 149 would create the criminal offense of failure to report the disappearance of a child to law enforcement, and make failure to report a child as missing a grossly negligent omission that could subject the parent or other person providing care to or supervision of the minor to Class H felony punishment for child abuse if the child is seriously injured. The bill would increase the penalties for intentional concealment of the death of a child, and for making a false report to law enforcement concerning an investigation into the disappearance of a child or an investigation into certain felony offenses against child victims. The bill would also impose a criminal penalty for failure to report child abuse, neglect, or dependency.***

CURRENT LAW: G.S. 7B-301, commonly known as the "child abuse reporting law," requires anyone who has cause to suspect that a child under the age of 18 years old is abused, neglected, dependent, or has died as the result of maltreatment, to report that child's situation to the director of the department of social services (DSS Director) in the county where the juvenile resides or is located. Reports may be made orally, by telephone, or in writing, and must include any information the person making the report believes might be helpful in establishing the need for protective services or court intervention. The person is generally required to give his or her name, address, and phone number, but the person's refusal to do so will not prevent DSS from investigating the report. A DSS Director who receives a report of sexual abuse of a juvenile in a child care facility must notify the SBI of the report within 24 hours or on the next workday. The law does not impose civil or criminal penalties for failing to report suspected child abuse, neglect, or dependency. (Statutory definitions of abused, neglected, and dependent juveniles are set out on page 3 of this summary)

Concealment of any death is currently a Class I felony under G.S. 14-401.22. A person is guilty of the offense if he or she, with the intent to conceal the death of a person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body. If the deceased did not die of natural causes and the person dismembered or destroyed the remains of the deceased by any means, concealment of the death is a Class D felony.

Making a false, misleading, or unfounded report to a law enforcement agency or officer for the purpose of interfering with the operation of a law enforcement agency or to hinder or obstruct any law enforcement officer in the performance of the officer's duty is a Class 2 misdemeanor.

BILL ANALYSIS: **Section 2** of the bill would make it a Class I felony for a parent or other person providing care or supervision for a child under the age of 16 to knowingly or wantonly fail to report the disappearance of that child to law enforcement. Any other person who reasonably suspects that the child has disappeared and may be in danger and fails to make a report to law enforcement would be guilty of a Class 1 misdemeanor. As defined in the bill, disappearance of a child occurs when a parent or other person providing supervision of the child does not know the location of the child and has not had contact with the child for at least 24 hours. The provisions in Section 2 of the bill would not apply to licensed child care facilities required to report missing or deceased children pursuant to Article 7 of Chapter 110

of the General Statutes, or teachers who report a child as absent from school in accordance with applicable law. Any person acting in good faith when making a report concerning the disappearance of a child would be immune from any civil or criminal liability; good faith would be presumed in any proceeding involving liability.

Section 3 of the bill would make failure to report a child as missing a grossly negligent omission for which a parent or other person providing care or supervision of a child under the age of 16 could be found guilty of child abuse and punished as a Class H felon, if the omission results in serious physical injury to the child.

Section 4 of the bill would make a conforming amendment to the reporting requirement that currently applies to licensed child care facilities, making it clear that those facilities must continue to report missing or deceased children in accordance with G.S. 110-102.1. It also changes the definition of "child" by lowering the age from 18 to 16 for purposes of the statutes governing child care facilities.

Section 5 of the bill would make it a Class H felony to intentionally conceal the death of a child under the age of 16 by failing to notify law enforcement, or secretly burying or otherwise secretly disposing of the child's body. The bill would make it a Class D felony to conceal the death of any person, knowing or having reason to know the person did not die of natural causes.

Section 6 of the bill would make it a Class H felony to make a false, deliberately misleading, or unfounded report to a law enforcement agency or officer if the false report is related to a law enforcement investigation involving the disappearance of a child under the age of 16. The increased penalty would also apply to a false, deliberately misleading, or unfounded report to a law enforcement agency or officer related to a law enforcement investigation involving a child victim of a Class A – Class C felony offense (includes 1st & 2nd degree murder, rape, incest, kidnapping, child abuse inflicting serious bodily injury, patient abuse & neglect, assault with deadly weapon with intent to kill inflicting serious injury, sale or delivery of controlled substance to minor under 13 by person over 18, as well as other offenses in those classifications).

Section 7 of the bill would amend the child abuse reporting law to provide a specific criminal penalty. Any person who reasonably suspects that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, would be guilty of a Class 1 misdemeanor for failure to make the required report to the director of the county department of social services in the county where the juvenile resides or is found. A DSS director who receives a report of sexual abuse of a juvenile in a child care facility and who knowingly fails to notify the SBI of the report as required would also be guilty of a Class 1 misdemeanor.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

DEFINITIONS RELATED TO THE CHILD ABUSE REPORTING LAW IN SECTION 7 OF THE BILL
(From G.S. 7B-101)

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

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or
f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

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

Neglected juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 149 (First Edition)

SHORT TITLE: Caylee's Law/Report Missing Children.

SPONSOR(S): Representatives Hastings, Jordan, Schaffer, and J. Bell

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Department of Public Safetly, Indigent Defense Services

EFFECTIVE DATE December 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: $136 - $1,618 per disposition
- Indigent Defense Services: Per case cost increase of $14 - $221 in district court
  Per case cost increase of $50 - $396 in superior court without a trial
  Per case cost increase of $134 - $1,046 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of $327 - $3,703

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

House Bill 149 would create a series of new offenses involving the failure to report a missing child and would also expand the scope of several already existing offenses. Section 2 of the bill amends Article 39 of Chapter 14 of the General Statutes by adding a new section, G.S. 14-318.5(b), which makes failure to report the disappearance of a child to law enforcement a Class I felony for any person providing care to a child. Section 2 also creates a Class 1 misdemeanor offense for failure on the part of any person who suspects the disappearance of a child and who suspects the child may be in danger to report those suspicions to law enforcement.

G.S. 14-318.4 defines "grossly negligent omission" in providing care to or supervision of a child, and makes such omission a Class E felony if the omission results in serious bodily injury to the child or a Class H felony if the omission results in serious physical injury to the child. Section 3 of the bill expands the definition of "grossly negligent omission" to include the failure to report a missing child to law enforcement.

G.S. 14-401.22 makes the failure to report to law enforcement the death of person, secret burial or disposal of a dead human body a Class I felony if it is done with the intent to conceal the death of a person. Section 5 increases the penalty to a Class H felony if the offense involves the death of a person less than 16 years of age.

G.S. 14-225 makes it a Class 2 misdemeanor to make false reports to law enforcement. Section 6 amends this General Statute by making the offense a Class H felony if the false report involved the disappearance of a child or child victim of a Class A, B1, B2, or C felony offense.

Section 7 adds criminal punishments for failure to comply with G.S. 7B-301(b), requiring any person or institution who suspects that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment to report it to the authorities, and requiring a director of social services who receives a report of sexual abuse of a child in a child care facility to notify the State Bureau of Investigation of the report. The bill makes both offenses Class 1 misdemeanors. The following table illustrates changes the bill makes to existing statutes.

General Statute	Offense description	Current Class	Proposed Class
14-318.5(b)	Failure of caregiver to report the disappearance of a child to law enforcement	New Offense	Class I Felony
14-318.5(c)	Failure of any person who suspects the disappearance of a child and who suspects the child may be in danger to report those suspicions to law enforcement	New Offense	Class 1 MD
14-401.22	Failure to report to law enforcement the death of person, secret burial or disposal of a dead human body if it involves a child	Class I Felony	Class H Felony
14-225(b)	Making false reports to law enforcement that involves the disappearance of a child or child victim of a Class A, B1, B2, or C felony offense	Class 2 MD	Class H Felony
7B-301(b)	Failure to report to authorities a suspicion that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment must report it to the authorities	New Offense	Class 1 MD
7B-301(c)	Failure by a director of social services to notify the State Bureau of Investigation of a report of sexual abuse of a child in a child care facility	New Offense	Class 1 MD

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Since the bill creates four new offenses, increases the scope of two existing offenses, and elevates two offenses under certain circumstances, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

Judicial Branch

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

This bill creates four new criminal offenses, elevates two offenses, and expands the scope of two existing offenses. AOC does not have data upon which to estimate the number of charges that may occur due to the changes proposed in this bill. Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. For every person charged with these offenses, AOC estimates the average cost to the court would be $165.

Section 2 also creates a new Class I felony offense. While pleas for Class I felonies are sometimes handled in district court, many pleas and all trials for Class I felonies are handled in superior court. For every person charged with a Class I felony, AOC estimates the average cost to the court would be $365. Because this is a new offense, AOC has no way to estimate the number of charges that may result from this section of the bill.

Section 3 expands the scope of an existing Class H felony. In fiscal year 2011-12, approximately 12 defendants were charged with gross negligent omission in the care of a child that showed a reckless disregard for human life. Of these, 6 (50%) were convicted. It is not known how many additional charges or convictions may result from the proposed broadening of the current statute. For every person charged with this offense, AOC estimates the average cost to the court would be $501.

Section 3 also expands the scope of an existing Class E felony offense. In fiscal year 2011-12, approximately 23 defendants were charged with negligent child abuse resulting in serious bodily injury. Of these 12 (52%) were convicted. It is not known how many additional charges or convictions may result from the proposed broadening of the current statute. For every person charged with this offense, AOC estimates the average cost to the court would be $1,618.

Section 5 increases an existing Class I felony to a Class H felony if a child is involved. While pleas for both felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. The difference in cost to AOC between a Class I felony and a Class H felony is $136 (Class H per case cost of $501 minus Class I per case cost of $365 equals $136). In FY 2011-12 six defendants were charged with a violation of G.S. 14-401.22. Of those, two were convicted. AOC cannot estimate how many charges may result from the elevated charge because it is not known how many of the existing offenses involved the death of a child.

Section 6 elevates an existing offense for making a false, misleading, or unfounded report to law enforcement, currently a Class 2 misdemeanor under G.S. 14-225, to a Class H felony if a child is involved. In fiscal year 2011-12, approximately 1,246 defendants were charged with this offense. Of these, 301 (24%) were convicted. It is not known whether any of the 301 convictions under G.S. 14-225 involved conduct covered by the proposed Class H offense and could become Class H convictions under the proposed section. For every person charged with this elevated Class H felony, AOC estimates the average cost to the court would be $277, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($501 minus $88).

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. There were four new offenses created by this legislation; each of these new offenses would create new costs for IDS. IDS estimates that a new Class I felony would cost $221 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney for a Class I felony would be $396 per case if the case does not go to trial and $1,046 if it does.

Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. IDS estimates that these new Class 1 misdemeanors would cost $166 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney for these Class 1 misdemeanors would be $321 per case if the case does not go to trial and $847 if it does.

This bill also elevates the penalties for two offenses, which will lead to increased per case costs for IDS. IDS estimates that the cost of elevating a Class I felony offense to a Class H felony offense will result in an increase of $14 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost of a PAC attorney for this Class H felony would be $50 per case if the case does not go to trial and $134 if it does.

IDS estimates that the cost of elevating a Class 2 misdemeanor to a Class H felony will result in an increase of $69 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost of a PAC attorney for a Class H felony would be $125 per case if the case does not go to trial and $333 if it does.

This bill would also create additional grounds for existing offenses involving the failure to report a missing child. In general, creating additional grounds for an existing offense may increase the number of cases in which IDS has to provide appointed counsel. However, there is no way to quantify that impact.

Department of Public Safety –Prison Section

Since the bill creates four new offenses, increases the scope of two existing offenses, and elevates two offenses under certain circumstances, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution; and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General post-release supervision and supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced to community supervision under the proposed bill.

Section 2 also creates a new Class I felony offense. In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average lengths of intermediate and community punishment imposed for this offense class were 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is $2,831 (780 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is $2,396 (660 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

Section 3 expands the scope of an existing Class E felony offense. In FY 2011-12, 57% of Class E felony offenders received active sentences; 43% received intermediate sentences. All active sentences result in twelve months of post-release supervision (PRS). The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[6] The average lengths of intermediate punishment imposed for this offense class was 34 months. The average cost to community corrections for any individual convicted of a Class E felony and who receives an intermediate sentence is $3,703 (1,020 days times $3.63 per day). It is not known how many additional convictions may result from the proposed broadening of the current statute.

Section 3 also expands the scope of an existing Class H felony. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[7] The average lengths of intermediate and community punishment imposed for this offense class were 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is $3,158 (870 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is $2,831 (780 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

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[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[6] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[7] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

Section 5 elevates an existing Class I felony to a Class H felony if a child is involved. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. Since both Class H and Class I felonies require nine months of post-release supervision, there will be no additional cost to community corrections for individuals receiving active sentences. For every individual convicted of a Class H felony and who receives an intermediate sentence, it will cost community corrections an addition $327, which is the difference between the current Class I felony and the new Class H felony ($3,158 minus $2,831). For every individual convicted of a Class H felony and who receives a supervised community sentence, it will cost community corrections an addition $435, which is the difference between the current Class I felony and the new Class H felony ($2,831 minus $2,396).

Section 6 elevates an existing Class 2 misdemeanor to a Class H felony if a child is involved. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. Only felonies require post-release supervision (PRS) for active sentences. All active Class H felony sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[8] For every individual convicted of a Class H felony who receives an intermediate sentence, it will cost community corrections an addition $1,416, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($3,158 minus $1,742). For every individual convicted of a Class H felony who receives a supervised community sentence, it will cost community corrections an addition $1,415, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($2,831 minus $1,416).

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Maggie Morrissey
Kristine Leggett

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: March 6, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

[8] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 149

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H149-ARV-24 [v.2]

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

Date April 18 ,2013

Senator Allran

moves to amend the bill on page 4, lines 26-29 by rewriting those lines to read:

"(b) Any person or institution who knowingly and ~~willfully~~ voluntarily fails to report the case of a juvenile as required by subsection (a) of this section, or who knowingly and willfully prevents another person from making a required report, is guilty of a Class 1 misdemeanor."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 149

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H149-ARV-25 [v.2]

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

Date April 18 ,2013

Senator Allran

moves to amend the bill on page 4, lines 26-34 by rewriting those lines to read:

"(b) The following professionals have a special duty to report the case of a juvenile as required by subsection (a) of this section:

(1) Physicians, nurses, dentists, optometrists, medical examiners or coroners, or any other medical or mental health professionals and religious practitioners of the healing arts.

(2) School teachers, school administrators and school counselors.

(3) Addiction counselors, social workers, child care workers and foster parents.

(4) Law enforcement officers, juvenile court personnel, probation officers, and officers and employees of the Division of Juvenile Services.

(5) Members of the clergy."

SECTION 8. Article 3 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-301A. Penalties for failure to report abuse, neglect, dependency, or death due to maltreatment.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, any person or institution who knowingly and willfully fails to report the case of a juvenile as required by G.S. 7B-301(a), or who knowingly and willfully prevents another person from making the required report, is guilty of a Class 1 misdemeanor.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, a person who knowingly and willfully fails to report the case of a juvenile as required by G.S. 7B-301(a), or who knowingly and willfully prevents another person from making the required report, is guilty of a Class A1 misdemeanor if either of the following applies:

(1) The person has a special duty pursuant to G.S. 7B-301(b) to report the case of a juvenile in accordance with the requirements of G.S. 7B-301(a).

(2) The person is 18 years of age or older and lives in the same house or living unit as the juvenile. This subdivision shall not apply if the court finds that the person is a victim of domestic violence, or the court finds other mitigating circumstances.

(c) A person who knowingly and willfully fails to report the case of a juvenile as required by G.S. 7B-301(a), or who knowingly and willfully prevents another person from

making the required report, is guilty of a Class I felony if the juvenile suffers serious injury as a result of the person's failure to report.

(d) A person who knowingly and willfully fails to report the case of a juvenile as required by G.S. 7B-301(a), or who knowingly and willfully prevents another person from making the required report, is guilty of a Class G felony if the juvenile suffers serious bodily injury or death as a result of the person's failure to report.

(e) A director of social services who receives a report of sexual abuse of a juvenile in a child care facility and who knowingly fails to notify the State Bureau of Investigation of the report pursuant to G.S. 7B-301(a) is guilty of a Class 1 misdemeanor."

SECTION 9. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-18 TIME: 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Maranda Jodd	Holly Springs	Berger
2. Candace Brown	Raleigh	Berger
3. Karen Mews	Trenton	Brown
4. Trestan Farrington	Holly springs	Berger
5.		
6.		
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/18/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. JUSTIN OWENS
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 16, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCWSA
Lori Ann Harris	LWVA
Colleen Kochanek	NCCADV
R Thorn	NCHN

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 16, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	AWC
Brent Woodcox	Rucho
Alex Miller	KLG
Sarah Preston	ACLU-NC

Senate Committee on Judiciary II
Tuesday, April 23, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 399	Criminal Defendant May Waive Jury Trial.	Senator Brunstetter
SB 455	Increased Penalty/Seed Law Violations.-AB	Senator Cook Senator Rabin Senator Barefoot
SB 574	Appearance Bond Valid For Certain Time Period.	Senator Randleman

Adjournment

Senate Judiciary II Committee
Tuesday, April 23, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, April 23, 2013 in room 1124 of the Legislative Building. Caleb Sanders of Morganton, Nic Carroll of Wilmington, and Ben Hedgepeth of Fayetteville served as pages. Senator Allran presided as chair.

S.B. 399 – Criminal Defendant May Waive Jury Trial

Senator Brunstetter was recognized to explain the bill. It would place a constitutional amendment on the ballot that, if passed, would allow a defendant to waive a jury trial and have a trial by the court. Senator Daniel was recognized to offer a technical amendment that changed the word "regulations" to "procedures". Senator Tucker moved to adopt the amendment and the motion carried. Dick Taylor, NC Advocates for Justice, and Phil Berger, Jr., Rockingham County's District Attorney, were recognized to speak in favor of the bill. Senator Cook moved for a favorable report as amended and the motion carried. A copy of the bill, the summary, and the amendment is attached.

S.B. 455 – Increased Penalty/Seed Law Violations – AB

Senator Cook and Brenda Carter, an attorney with the Research Division, were recognized to explain the bill. It would increase the penalty for violations of the State's seed law from $500 to $10,000. In cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the bill would require a court to order restitution to any injured party for losses incurred as a result of the unlawful sale. The bill also authorizes the Commissioner of Agriculture to suspend a violator's seed license for a period of up to three years. Joy Hicks, the legislative liaison for the Department of Agriculture, was recognized to answer questions. Senator Bryant moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 574 – Appearance Bond Valid for Certain Time Period

Senator Randleman was recognized to explain the bill. Senator Tucker moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would amend the law which provides for the termination of an obligor on an appearance bond by making the termination automatic on the occurrence of the listed events, and adds a new event to the list. Mark Black, representing the NC Bail Agents, was recognized to answer questions. Hal Pell, a staff attorney with the Research Division, was recognized to further explain the PCS and to answer questions. Phil Berger, Jr. was recognized to express his approval of the PCS. Senator Randleman moved to put the bill into a subcommittee for further discussion. Senator Allran appointed the following members: Senator Randleman – Chair, Senator Bryant, Senator Cook, Senator McKissick, and Senator Tucker. A copy of the PCS and the summary is attached.

The meeting adjourned at 10:44 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 23, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 399	Criminal Defendant May Waive Jury Trial.	Senator Brunstetter
SB 455	Increased Penalty/Seed Law Violations.-AB	Senator Cook Senator Rabin Senator Barefoot
SB 574	Appearance Bond Valid For Certain Time Period.	Senator Randleman

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, April 23, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

SB **455** **(CS#1)** Increased Penalty/Seed Law Violations.-AB

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

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

SB **399** Criminal Defendant May Waive Jury Trial.

Draft Number:	S399-PCS75288-RK-31
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Bill Cook will handle SB 455
Senator Peter Brunstetter will handle SB 399

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 399

Short Title:	Criminal Defendant May Waive Jury Trial.	(Public)
Sponsors:	Senator Brunstetter (Primary Sponsor).	
Referred to:	Judiciary II.	

March 25, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION TO PROVIDE THAT A PERSON ACCUSED OF ANY CRIMINAL OFFENSE MAY WAIVE THE RIGHT TO TRIAL BY JURY AND INSTEAD BE TRIED BY A JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 24 of Article I of the North Carolina Constitution reads as rewritten:

"**Sec. 24. Right of jury trial in criminal cases.**

No person shall be convicted of any crime but by the unanimous verdict of a jury in open ~~court.~~ court; except that a person accused of any crime may, in writing or on the record in the court and with the consent of the trial judge, waive jury trial, subject to regulations prescribed by the General Assembly. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held on November 4, 2014, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment providing that a person accused of any crime may, in writing or on the record in court and with the consent of the trial judge, waive the person's right to a trial by jury."

SECTION 3. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective December 1, 2014, and applies to criminal offenses arraigned in superior court on or after that date.

SECTION 4. G.S. 15A-1201 reads as rewritten:

"**§ 15A-1201. Right to trial by ~~jury.~~ jury; waiver of jury trial.**

(a) In all criminal cases the defendant has the right to be tried by a jury of 12 whose verdict must be unanimous. In the district court the judge is the finder of fact in criminal cases, but the defendant has the right to appeal for trial de novo in superior court as provided in G.S. 15A-1431. In superior court all criminal trials in which the defendant enters a plea of not guilty must be tried before a ~~jury.~~ jury, unless the defendant waives the right to a jury trial as provided in subsection (b) of this section.

(b) A defendant in any criminal case in superior court may, in writing or on the record in the court and with the consent of the trial judge, waive the right to trial by jury. When a defendant waives the right to trial by jury under this section, the jury is dispensed with as provided by law, and the whole matter of law and fact shall be heard and judgment given by the court."

SECTION 5. Section 4 of this act becomes effective only upon approval by the voters of the constitutional amendment proposed in Section 1 of this act. If the constitutional amendment proposed in Section 1 is approved by the voters, Section 4 of this act becomes effective December 1, 2014, and applies to criminal cases arraigned in superior court on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 399:
Criminal Defendant May Waive Jury Trial

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 22, 2013
Introduced by:	Sen. Brunstetter	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act would place a constitutional amendment on the ballot that, if passed, would allow a defendant to waive a jury trial and have a trial by the court. The measure would be on the November 4, 2014, ballot; if passed, the statute providing the procedure for the change would be effective for cases arraigned on or after December 1, 2014.***

CURRENT LAW:

- Article I, Section 24 of the North Carolina Constitution provides that in order to be convicted of a criminal offense, the defendant must have a jury trial. For misdemeanors, a defendant may have a bench trial in District Court, and seek a trial de novo (with jury) in Superior Court.
- The United States Constitution does not have a jury trial requirement for criminal cases; a defendant may waive a jury trial in federal court.

BILL ANALYSIS: The act provides for a proposed constitutional amendment to be on the ballot for the statewide general election to be held on November 4, 2014. The ballot question would be whether a defendant may waive in writing or on the record, and with the consent of the trial judge, a trial by jury and choose a trial by the judge without a jury. The act contains a proposed statutory provision implementing the change.

EFFECTIVE DATE: If the ballot measure passes, the amendment and a statute implementing the change would be effective for cases arraigned in superior court on or after December 1, 2014.

O. Walker Reagan
Director

S399-SMRK-53 E1 -V2

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 399

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

S399-ARK-33 [v.1]

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

Date _____,2013

Senator DANIEL

moves to amend the bill on page 1, line 11, by deleting the word "regulations" and substituting the word "procedures".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 2

SENATE BILL 455*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/9/13

Short Title: Increased Penalty/Seed Law Violations.-AB (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE PENALTIES FOR VIOLATION OF THE SEED LAW.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 106-277.19 reads as rewritten:

"**§ 106-277.19. ~~Revocation~~ Revocation, suspension, or refusal of license for cause; hearing; appeal.**

In accordance with Chapter 150B of the General Statutes, the Commissioner is authorized to suspend any seed license issued for a period not to exceed three years, revoke any seed license issued, or to refuse to issue a seed license to any person ~~as hereinafter provided,~~ upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules ~~and regulations made and promulgated~~adopted thereunder.~~thereunder; provided that no license shall be revoked or refused until the person shall have first been given an opportunity to appear at a hearing before the Commissioner. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence.~~"

SECTION 1.(b) G.S. 106-277.24 reads as rewritten:

"**§ 106-277.24. Penalty for violations.**

Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant thereto shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall ~~only~~ pay a fine of not more than ~~five hundred dollars ($500.00).~~ten thousand dollars ($10,000). In determining the amount of the fine, the court shall consider the retail value of the seed sold in violation of the law, and in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the court shall order the payment of restitution to any injured party for any losses incurred as a result of the unlawful sale."

SECTION 2. This act becomes effective December 1, 2013, and applies to violations committed on or after that date.

SENATE BILL 455:
Increased Penalty/Seed Law Violations.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 22, 2013
Introduced by:	Sens. Cook, Rabin, Barefoot	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 369 would increase the penalty for violations of the State's seed law from $500 to $10,000. In cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the bill would require a court to order restitution to any injured party for losses incurred as a result of the unlawful sale. The bill also authorizes the Commissioner of Agriculture to suspend a violator's seed license for a period of up to three years.***

[As introduced, this bill was identical to H369, as introduced by Reps. Waddell, Brody, Langdon, Dixon, which is currently in House Judiciary Subcommittee B.]

CURRENT LAW: The North Carolina Seed Law, which governs the transportation, distribution, testing, labeling, and tagging of agricultural and vegetable seeds, is set out in Article 31 of Chapter 106 of the General Statutes. The Commissioner of Agriculture (Commissioner), after field testing for performance and trueness to variety, is authorized to register any variety, blend, or hybrid seed and to prohibit the sale of inferior or misrepresented seed. All seed dealers are required to register with and obtain a license from the Department of Agriculture and Consumer Services. Actions prohibited under the Seed Law include the transportation, distribution, or sale of seed unless a license has been obtained, a germination test has been completed within a nine-month period immediately prior to sale; and the seed is properly labeled. Sale of seed containing noxious weed seed is also prohibited. Violation of the Seed Law is a Class 3 misdemeanor punishable by a fine of not more than $500. The $500 limit on the fine that may be imposed for violations of the Seed Law was originally enacted in 1941, and apparently has not been increased since that time. The Commissioner has authority to revoke a seed license for repeated violations of the Seed Law, and appeals for revocations (or denials of issuance) may be heard in the Superior Court of Wake County or in the superior court of the county in which the violator resides.

BILL ANALYSIS: House Bill 369 would increase the maximum fine for violations of the State's seed law from $500 to $10,000. In addition, in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the bill would require a court to order restitution to any injured party for losses incurred as a result of the unlawful sale. In addition to the Commissioner's current authority to revoke or deny a license for repeated violations of the seed law, the Commissioner would have the authority to suspend a violator's seed license for a period of three years.

EFFECTIVE DATE: The bill would become effective December 1, 2013, and apply to offenses committed on or after that date.

Jennifer McGinnis, counsel to Senate Agriculture, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 574
PROPOSED COMMITTEE SUBSTITUTE S574-CSRK-30 [v.1]

4/22/2013 7:19:49 PM

Short Title: Appearance Bond Valid For Certain Time Period. (Public)

Sponsors:

Referred to:

April 2, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN APPEARANCE BOND FOR A DEFENDANT CHARGED WITH CERTAIN MISDEMEANORS IS ONLY VALID FOR A CERTAIN PERIOD OF TIME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534(h) reads as rewritten:

"(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is automatically terminated at an earlier time ~~if:~~if any of the following occur:

(1) A judge authorized to do so releases the obligor from his ~~bond; or~~bond.

(2) The principal is surrendered by a surety in accordance with G.S. ~~15A-540; or~~15A-540.

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. ~~15A-544.3; or~~15A-544.3.

(4) Prayer for judgment has been continued indefinitely in the district ~~court.~~court.

(5) Thirty-six months have passed from the date of release on a bail bond where the defendant is charged with a misdemeanor, except for an offense involving impaired driving, as defined in G.S. 20-4.01(24a). When the obligation automatically terminates for the obligor under this subdivision, the judicial official shall determine whether the defendant is again entitled to release and, if so, upon what conditions."

SECTION 2. This act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.

SENATE BILL 574: Appearance Bond Valid For Certain Time Period

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 22, 2013
Introduced by:	Sen. Randleman	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S574-CSRK-30		Committee Counsel

SUMMARY: ***This act amends the law which provides for the termination of an obligor on an appearance bond by making the termination automatic on the occurrence of the listed events, and adds a new event to the list. The act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.***

BILL ANALYSIS: The current law provides when the person providing an appearance bond is released from the obligation. The act would amend the law to:

- Provide that the release is "automatic" upon the occurrence of the event, so that the obligor would be legally entitled to the return of the bond immediately upon the happening of the event.
- Add to the statutory list a new event: Thirty-six months have passed from the date of release on a bail bond where the defendant is charged with a misdemeanor. The provision would not apply if the offense involving impaired driving. The court would determine any new bond requirement based upon the misdemeanor charge.

EFFECTIVE DATE: The act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.

O. Walker Reagan
Director

S574-SMRK-55 CSRK-30 -V1

Research Division
(919) 733-2578

SENATE PAGES ATTENDING

COMMITTEE: ~~[illegible]~~ Judiciary II ROOM: 1124

DATE: 4-23 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Caleb Sanders	Morganton	Daniel
2. Nic Carroll	Wilmington	Goolsby
3. Ben Hedgepeth	Fayetteville	Meredith
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/23/13 ROOM: 1124

1. ASHLEY MICKENS
2. ED KESLER
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

Senate Committee on Judiciary II
Thursday, April 25, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 149	Caylee's Law/Report Missing Children.	Rep. Hastings Rep. J. Bell Rep. Jordan Rep. Schaffer
SB 252	Increase Penalty/Controlled Substance Crimes.	Sen. J. Davis
SB 285	Eliminate ILAC Requirement.	Sen. J. Davis

Adjournment

Senate Judiciary II Committee
Thursday, April 25, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, April 25, 2013 in room 1124 of the Legislative Building. Elia Dew of Delco, Trevor Edwards of Goldsboro, and Aja White of Chapel Hill served as pages. Senator Allran presided as chair.

H.B. 149 – Caylee's Law/Report Missing Children

The subcommittee met and revised the language. Senator Davis moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Brenda Carter, a staff attorney with the Research Division, was recognized to explain the PCS. It would create the criminal offense of failure to report the disappearance of a child to law enforcement, and make failure to report a child as missing a grossly negligent omission that could subject the parent or other person providing care to or supervision of the minor to Class H felony punishment for child abuse if the child is seriously injured. The bill would increase the penalties for intentional concealment of the death of a child, and for making a false report to law enforcement concerning an investigation into the disappearance of a child or an investigation into certain felony offenses against child victims. The bill would also impose criminal penalties for certain violations of the child abuse reporting law. Representative Hastings was recognized to answer questions. Alex Miller, representing the Coalition against Domestic Violence was recognized to speaking favor of the bill. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the incarceration fiscal note is attached.

S.B. 252 – Increase Penalty/Controlled Substance Crimes

Senator Cook and Brenda Carter, an attorney with the Research Division, were recognized to explain the bill. It would increase the penalty for violations of the State's seed law from $500 to $10,000. In cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the bill would require a court to order restitution to any injured party for losses incurred as a result of the unlawful sale. The bill also authorizes the Commissioner of Agriculture to suspend a violator's seed license for a period of up to three years. Joy Hicks, the legislative liaison for the Department of Agriculture, was recognized to answer questions. Senator Bryant moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 574 – Appearance Bond Valid for Certain Time Period

Senator Davis was recognized to explain the bill. Senator Bryant moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would make it a Class G felony for an employee of a medical practitioner, pharmacy, hospital or other institution to misappropriate any controlled substances he or she may have access to by virtue of the employment. Ron Moore, Buncombe County's District Attorney, was recognized to further explain. Donnie Varnell, Special Agent in Charge, NC Department of Justice, was recognized to answer questions. Kristine Leggett, an analyst with the Fiscal Research Division, was recognized to explain the financial concerns and noted that an incarceration note would be available soon. A vote was not taken on the bill. A copy of the PCS and the summary is attached.

S.B. 285 – Eliminate ILAC Requirement

This bill was calendared for discussion only. Senator Davis was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would remove the requirement, for cases involving impaired driving and the introduction of evidence relating to alcohol concentration, that the analysis of a body fluid of the defendant be performed by a laboratory that is accredited by an accrediting agency that is a signatory to the International Laboratory Accreditation Cooperation Mutual Arrangement for Testing. Mr. Moore, Buncombe County's District Attorney, answered questions. Megan Apple-Carpenter, Buncombe County's Assistant District Attorney, was recognized for further explanation on hospital drug testing. Larry Yates, an analyst from the Program Evaluation Division, and Christy Agner, representing the Department of Justice, were recognized to explain lab testing and accreditation. A copy of the PCS, the summary, and the incarceration note is attached.

The meeting adjourned at 10:58 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

Corrected #1: H149 - Caylee's Law/Report Missing Children and S285 - Eliminate ILAC Requirement have been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 25, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 149	Caylee's Law/Report Missing Children.	Representative Hastings Representative J. Bell Representative Jordan Representative Schaffer
SB 252	Increase Penalty/Controlled Substance Crimes.	Senator J. Davis
SB 285	Eliminate ILAC Requirement.	Senator J. Davis

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk . ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 25, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 252	Increase Penalty/Controlled Substance Crimes.	Senator J. Davis

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, April 29, 2013

Senator Allran,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **149** **(CS#1)** Caylees Law/Report Missing Children.

Draft Number:	H149-PCS70358-RV-23
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Austin Allran will handle HB 149

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 149
Committee Substitute Favorable 3/6/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H149-CSRV-23 [v.1]
4/22/2013 7:18:31 PM

Short Title: Caylee's Law/Report Missing Children. (Public)

Sponsors:

Referred to:

February 27, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO FAIL TO REPORT THE DISAPPEARANCE OF A CHILD TO LAW ENFORCEMENT, TO INCREASE THE CRIMINAL PENALTY FOR CONCEALING THE DEATH OF A CHILD, TO INCREASE THE CRIMINAL PENALTY FOR MAKING A FALSE, MISLEADING, OR UNFOUNDED REPORT TO A LAW ENFORCEMENT AGENCY OR OFFICER FOR THE PURPOSE OF INTERFERING OR OBSTRUCTING AN INVESTIGATION INVOLVING A MISSING CHILD OR CHILD VICTIM OF A CLASS A, B1, B2, OR C FELONY, AND TO MAKE IT A CLASS 1 MISDEMEANOR FOR A PERSON TO FAIL TO REPORT THE ABUSE, NEGLECT, DEPENDENCY, OR DEATH DUE TO MALTREATMENT OF A JUVENILE OR TO PREVENT ANOTHER PERSON FROM MAKING SUCH REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. This act may be cited as "Caylee's Law."

SECTION 2. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.5. Failure to report the disappearance of a child to law enforcement; immunity of person reporting in good faith.**

(a) The following definitions apply in this section:

(1) Child. – Any person who is less than 16 years of age.

(2) Disappearance of a child. – When the parent or other person providing supervision of a child does not know the location of the child and has not had contact with the child for a 24-hour period.

(b) A parent or any other person providing care to or supervision of a child who knowingly or wantonly fails to report the disappearance of a child to law enforcement is in violation of this subsection. Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this subsection is punishable as a Class I felony.

(c) Any person who reasonably suspects the disappearance of a child and who reasonably suspects that the child may be in danger shall report those suspicions to law enforcement within a reasonable time. Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this subsection is punishable as a Class 1 misdemeanor.

(d) This section does not apply if G.S. 110-102.1 is applicable.

(e) Notwithstanding subsection (b) or (c) of this section, if a child is absent from school, a teacher is not required to report the child's absence to law enforcement officers under

this section, provided the teacher reports the child's absence from school pursuant to Article 26 of Chapter 115C of the General Statutes.

(f) The felony of failure to report the disappearance of a child as required by subsection (b) of this section is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(g) Any person who reports the disappearance of a child as required by this section is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action, provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed."

SECTION 3. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the child is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon the child is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony.

(a4) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

(a5) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class H felony if the act or omission results in serious physical injury to the child.

(a6) For purposes of this section, a "grossly negligent omission" in providing care to or supervision of a child includes the failure to report a child as missing to law enforcement as provided in G.S. 14-318.5(b).

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) Abandonment of an infant less than seven days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant.

(d) The following definitions apply in this section:

(1) 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.

(2) Serious physical injury. – Physical injury that causes great pain and suffering. The term includes serious mental injury."

SECTION 4. G.S. 110-102.1(a) reads as rewritten:

"(a) ~~Operators~~ Notwithstanding G.S. 14-318.5, operators and staff, as defined in G.S. 110-86(7), and G.S. 110-91(8), or any adult present with the approval of the care provider in a child care facility as defined in G.S. 110-86(3) and G.S. 110-106, upon learning that a child which has been placed in their care or presence is missing, shall immediately report the missing child to law enforcement. For purposes of this Article, a child is anyone under the age of ~~18~~16."

SECTION 5. G.S. 14-401.22 reads as rewritten:

"**§ 14-401.22. Concealment of death; disturbing human remains; dismembering human remains.**

(a) ~~Any~~ Except as provided in subsection (a1) of this section, any person who, with the intent to conceal the death of a person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body is guilty of a Class I felony.

(a1) Any person who, with the intent to conceal the death of a child, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead child's body is guilty of a Class H felony. For purposes of this subsection, a child is any person who is less than 16 years of age.

(b) Any person who aids, counsels, or abets any other person in concealing the death of a person is guilty of a Class A1 misdemeanor.

(c) Any person who willfully (i) disturbs, vandalizes, or desecrates human remains, by any means, including any physical alteration or manipulation of the human remains, or (ii) commits or attempts to commit upon any human remains any act of sexual penetration is guilty of a Class I felony. This subsection does not apply to:

(1) Acts by a first responder or others providing medical care.

(2) Acts committed as part of scientific or medical research, treatment, or diagnosis.

(3) Acts performed by a licensed funeral director or embalmer consistent with standard practice.

(4) Acts committed for the purpose of extracting body parts in accordance with usual and customary standards of medical practice.

(5) Acts by a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes.

(6) Acts committed for any other lawful purpose.

(d) Any person who attempts to conceal evidence of the death of another by knowingly and willfully dismembering or destroying human remains, by any means, including removing body parts or otherwise obliterating any portion thereof, shall be guilty of a Class H felony.

(e) Any person who violates ~~subsection~~ subsection (a), (a1), or (d) of this section, knowing or having reason to know the body or human remains are of a person that did not die of natural causes, shall be guilty of a Class D felony.

(f) As used in this section, "human remains" means any dead human body in any condition of decay or any significant part of a dead human body, including any limb, organ, or bone."

SECTION 6. G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) ~~Any~~ Except as provided in subsection (b) of this section, any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, deliberately misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a Class 2 misdemeanor.

(b) A violation of subsection (a) of this section is punishable as a Class H felony if the false, deliberately misleading, or unfounded report relates to a law enforcement investigation

involving the disappearance of a child as that term is defined in G.S. 14-318.5 or child victim of a Class A, B1, B2, or C felony offense. For purposes of this subsection, a child is any person who is less than 16 years of age."

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

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

(a) Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the department's assessment of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

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

(b) Any person or institution who knowingly or wantonly fails to report the case of a juvenile as required by subsection (a) of this section, or who knowingly or wantonly prevents another person from making a report as required by subsection (a) of this section, is guilty of a Class 1 misdemeanor.

(c) A director of social services who receives a report of sexual abuse of a juvenile in a child care facility and who knowingly fails to notify the State Bureau of Investigation of the report pursuant to subsection (a) of this section is guilty of a Class 1 misdemeanor."

SECTION 8. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 149:
Caylee's Law/Report Missing Children

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 24, 2013
Introduced by:	Reps. Hastings, J. Bell, Jordan, Schaffer	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition H149-CSRV-23		

SUMMARY: ***This proposed committee substitute for House Bill 149 would create the criminal offense of failure to report the disappearance of a child to law enforcement, and make failure to report a child as missing a grossly negligent omission that could subject the parent or other person providing care to or supervision of the minor to Class H felony punishment for child abuse if the child is seriously injured. The bill would increase the penalties for intentional concealment of the death of a child, and for making a false report to law enforcement concerning an investigation into the disappearance of a child or an investigation into certain felony offenses against child victims. The bill would also impose criminal penalties for certain violations of the child abuse reporting law.***

CURRENT LAW: G.S. 7B-301, commonly known as the "child abuse reporting law," requires anyone who has cause to suspect that a child under the age of 18 years old is abused, neglected, dependent, or has died as the result of maltreatment, to report that child's situation to the director of the department of social services (DSS Director) in the county where the juvenile resides or is located. Reports may be made orally, by telephone, or in writing, and must include any information the person making the report believes might be helpful in establishing the need for protective services or court intervention. The person is generally required to give his or her name, address, and phone number, but the person's refusal to do so will not prevent DSS from investigating the report. A DSS Director who receives a report of sexual abuse of a juvenile in a child care facility must notify the SBI of the report within 24 hours or on the next workday. The law does not impose civil or criminal penalties for failing to report suspected child abuse, neglect, or dependency. (Statutory definitions of abused, neglected, and dependent juveniles are set out on page 3 of this summary)

Concealment of any death is currently a Class I felony under G.S. 14-401.22. A person is guilty of the offense if he or she, with the intent to conceal the death of a person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body. If the deceased did not die of natural causes and the person dismembered or destroyed the remains of the deceased by any means, concealment of the death is a Class D felony.

Making a false, misleading, or unfounded report to a law enforcement agency or officer for the purpose of interfering with the operation of a law enforcement agency or to hinder or obstruct any law enforcement officer in the performance of the officer's duty is a Class 2 misdemeanor.

BILL ANALYSIS: **Section 2** of the bill would make it a Class I felony for a parent or other person providing care or supervision for a child under the age of 16 to knowingly or wantonly fail to report the disappearance of that child to law enforcement. Any other person who reasonably suspects that the child has disappeared and may be in danger and fails to make a report to law enforcement would be guilty of a Class 1 misdemeanor. As defined in the bill, disappearance of a child occurs when a parent or other person providing supervision of the child does not know the location of the child and has not had contact with the child for at least 24 hours. The provisions in Section 2 of the bill would not apply to licensed

child care facilities required to report missing or deceased children pursuant to Article 7 of Chapter 110 of the General Statutes, or teachers who report a child as absent from school in accordance with applicable law. Any person acting in good faith when making a report concerning the disappearance of a child would be immune from any civil or criminal liability; good faith would be presumed in any proceeding involving liability.

Section 3 of the bill would make failure to report a child as missing a grossly negligent omission for which a parent or other person providing care or supervision of a child under the age of 16 could be found guilty of child abuse and punished as a Class H felon, if the omission results in serious physical injury to the child.

Section 4 of the bill would make a conforming amendment to the reporting requirement that currently applies to licensed child care facilities, making it clear that those facilities must continue to report missing or deceased children in accordance with G.S. 110-102.1. It also changes the definition of "child" by lowering the age from 18 to 16 for purposes of the statutes governing child care facilities.

Section 5 of the bill would make it a Class H felony to intentionally conceal the death of a child under the age of 16 by failing to notify law enforcement, or secretly burying or otherwise secretly disposing of the child's body. The bill would make it a Class D felony to conceal the death of any person, knowing or having reason to know the person did not die of natural causes.

Section 6 of the bill would make it a Class H felony to make a false, deliberately misleading, or unfounded report to a law enforcement agency or officer if the false report is related to a law enforcement investigation involving the disappearance of a child under the age of 16. The increased penalty would also apply to a false, deliberately misleading, or unfounded report to a law enforcement agency or officer related to a law enforcement investigation involving a child victim of a Class A – Class C felony offense (includes 1st & 2nd degree murder, rape, incest, kidnapping, child abuse inflicting serious bodily injury, patient abuse & neglect, assault with deadly weapon with intent to kill inflicting serious injury, sale or delivery of controlled substance to minor under 13 by person over 18, as well as other offenses in those classifications).

Section 7 of the bill would amend the child abuse reporting law to provide that a person who knowingly or wantonly fails to make a required report to the director of the county department of social services when he or she reasonably suspects that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment would be guilty of a Class 1 misdemeanor. A DSS director who receives a report of sexual abuse of a juvenile in a child care facility and who knowingly fails to notify the SBI of the report as required would also be guilty of a Class 1 misdemeanor.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

DEFINITIONS RELATED TO THE CHILD ABUSE REPORTING LAW IN SECTION 7 OF THE BILL
(From G.S. 7B-101)

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

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or
f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

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

Neglected juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 149 (First Edition)

SHORT TITLE: Caylee's Law/Report Missing Children.

SPONSOR(S): Representatives Hastings, Jordan, Schaffer, and J. Bell

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Department of Public Safetly, Indigent Defense Services

EFFECTIVE DATE December 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: $136 - $1,618 per disposition
- Indigent Defense Services: Per case cost increase of $14 - $221 in district court
  Per case cost increase of $50 - $396 in superior court without a trial
  Per case cost increase of $134 - $1,046 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of $327 - $3,703

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

House Bill 149 would create a series of new offenses involving the failure to report a missing child and would also expand the scope of several already existing offenses. Section 2 of the bill amends Article 39 of Chapter 14 of the General Statutes by adding a new section, G.S. 14-318.5(b), which makes failure to report the disappearance of a child to law enforcement a Class I felony for any person providing care to a child. Section 2 also creates a Class 1 misdemeanor offense for failure on the part of any person who suspects the disappearance of a child and who suspects the child may be in danger to report those suspicions to law enforcement.

G.S. 14-318.4 defines "grossly negligent omission" in providing care to or supervision of a child, and makes such omission a Class E felony if the omission results in serious bodily injury to the child or a Class H felony if the omission results in serious physical injury to the child. Section 3 of the bill expands the definition of "grossly negligent omission" to include the failure to report a missing child to law enforcement.

G.S. 14-401.22 makes the failure to report to law enforcement the death of person, secret burial or disposal of a dead human body a Class I felony if it is done with the intent to conceal the death of a person. Section 5 increases the penalty to a Class H felony if the offense involves the death of a person less than 16 years of age.

G.S. 14-225 makes it a Class 2 misdemeanor to make false reports to law enforcement. Section 6 amends this General Statute by making the offense a Class H felony if the false report involved the disappearance of a child or child victim of a Class A, B1, B2, or C felony offense.

Section 7 adds criminal punishments for failure to comply with G.S. 7B-301(b), requiring any person or institution who suspects that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment to report it to the authorities, and requiring a director of social services who receives a report of sexual abuse of a child in a child care facility to notify the State Bureau of Investigation of the report. The bill makes both offenses Class 1 misdemeanors. The following table illustrates changes the bill makes to existing statutes.

General Statute	Offense description	Current Class	Proposed Class
14-318.5(b)	Failure of caregiver to report the disappearance of a child to law enforcement	New Offense	Class I Felony
14-318.5(c)	Failure of any person who suspects the disappearance of a child and who suspects the child may be in danger to report those suspicions to law enforcement	New Offense	Class 1 MD
14-401.22	Failure to report to law enforcement the death of person, secret burial or disposal of a dead human body if it involves a child	Class I Felony	Class H Felony
14-225(b)	Making false reports to law enforcement that involves the disappearance of a child or child victim of a Class A, B1, B2, or C felony offense	Class 2 MD	Class H Felony
7B-301(b)	Failure to report to authorities a suspicion that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment must report it to the authorities	New Offense	Class 1 MD
7B-301(c)	Failure by a director of social services to notify the State Bureau of Investigation of a report of sexual abuse of a child in a child care facility	New Offense	Class 1 MD

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Since the bill creates four new offenses, increases the scope of two existing offenses, and elevates two offenses under certain circumstances, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

Judicial Branch

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

This bill creates four new criminal offenses, elevates two offenses, and expands the scope of two existing offenses. AOC does not have data upon which to estimate the number of charges that may occur due to the changes proposed in this bill. Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. For every person charged with these offenses, AOC estimates the average cost to the court would be $165.

Section 2 also creates a new Class I felony offense. While pleas for Class I felonies are sometimes handled in district court, many pleas and all trials for Class I felonies are handled in superior court. For every person charged with a Class I felony, AOC estimates the average cost to the court would be $365. Because this is a new offense, AOC has no way to estimate the number of charges that may result from this section of the bill.

Section 3 expands the scope of an existing Class H felony. In fiscal year 2011-12, approximately 12 defendants were charged with gross negligent omission in the care of a child that showed a reckless disregard for human life. Of these, 6 (50%) were convicted. It is not known how many additional charges or convictions may result from the proposed broadening of the current statute. For every person charged with this offense, AOC estimates the average cost to the court would be $501.

Section 3 also expands the scope of an existing Class E felony offense. In fiscal year 2011-12, approximately 23 defendants were charged with negligent child abuse resulting in serious bodily injury. Of these 12 (52%) were convicted. It is not known how many additional charges or convictions may result from the proposed broadening of the current statute. For every person charged with this offense, AOC estimates the average cost to the court would be $1,618.

Section 5 increases an existing Class I felony to a Class H felony if a child is involved. While pleas for both felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. The difference in cost to AOC between a Class I felony and a Class H felony is $136 (Class H per case cost of $501 minus Class I per case cost of $365 equals $136). In FY 2011-12 six defendants were charged with a violation of G.S. 14-401.22. Of those, two were convicted. AOC cannot estimate how many charges may result from the elevated charge because it is not known how many of the existing offenses involved the death of a child.

Section 6 elevates an existing offense for making a false, misleading, or unfounded report to law enforcement, currently a Class 2 misdemeanor under G.S. 14-225, to a Class H felony if a child is involved. In fiscal year 2011-12, approximately 1,246 defendants were charged with this offense. Of these, 301 (24%) were convicted. It is not known whether any of the 301 convictions under G.S. 14-225 involved conduct covered by the proposed Class H offense and could become Class H convictions under the proposed section. For every person charged with this elevated Class H felony, AOC estimates the average cost to the court would be $277, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($501 minus $88).

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. There were four new offenses created by this legislation; each of these new offenses would create new costs for IDS. IDS estimates that a new Class I felony would cost $221 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney for a Class I felony would be $396 per case if the case does not go to trial and $1,046 if it does.

Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. IDS estimates that these new Class 1 misdemeanors would cost $166 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney for these Class 1 misdemeanors would be $321 per case if the case does not go to trial and $847 if it does.

This bill also elevates the penalties for two offenses, which will lead to increased per case costs for IDS. IDS estimates that the cost of elevating a Class I felony offense to a Class H felony offense will result in an increase of $14 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost of a PAC attorney for this Class H felony would be $50 per case if the case does not go to trial and $134 if it does.

IDS estimates that the cost of elevating a Class 2 misdemeanor to a Class H felony will result in an increase of $69 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost of a PAC attorney for a Class H felony would be $125 per case if the case does not go to trial and $333 if it does.

This bill would also create additional grounds for existing offenses involving the failure to report a missing child. In general, creating additional grounds for an existing offense may increase the number of cases in which IDS has to provide appointed counsel. However, there is no way to quantify that impact.

Department of Public Safety –Prison Section

Since the bill creates four new offenses, increases the scope of two existing offenses, and elevates two offenses under certain circumstances, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General post-release supervision and supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced to community supervision under the proposed bill.

Section 2 also creates a new Class I felony offense. In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average lengths of intermediate and community punishment imposed for this offense class were 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is $2,831 (780 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is $2,396 (660 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

Section 3 expands the scope of an existing Class E felony offense. In FY 2011-12, 57% of Class E felony offenders received active sentences; 43% received intermediate sentences. All active sentences result in twelve months of post-release supervision (PRS). The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[6] The average lengths of intermediate punishment imposed for this offense class was 34 months. The average cost to community corrections for any individual convicted of a Class E felony and who receives an intermediate sentence is $3,703 (1,020 days times $3.63 per day). It is not known how many additional convictions may result from the proposed broadening of the current statute.

Section 3 also expands the scope of an existing Class H felony. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[7] The average lengths of intermediate and community punishment imposed for this offense class were 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is $3,158 (870 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is $2,831 (780 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

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[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[6] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[7] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

Section 5 elevates an existing Class I felony to a Class H felony if a child is involved. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. Since both Class H and Class I felonies require nine months of post-release supervision, there will be no additional cost to community corrections for individuals receiving active sentences. For every individual convicted of a Class H felony and who receives an intermediate sentence, it will cost community corrections an addition $327, which is the difference between the current Class I felony and the new Class H felony ($3,158 minus $2,831). For every individual convicted of a Class H felony and who receives a supervised community sentence, it will cost community corrections an addition $435, which is the difference between the current Class I felony and the new Class H felony ($2,831 minus $2,396).

Section 6 elevates an existing Class 2 misdemeanor to a Class H felony if a child is involved. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. Only felonies require post-release supervision (PRS) for active sentences. All active Class H felony sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[8] For every individual convicted of a Class H felony who receives an intermediate sentence, it will cost community corrections an addition $1,416, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($3,158 minus $1,742). For every individual convicted of a Class H felony who receives a supervised community sentence, it will cost community corrections an addition $1,415, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($2,831 minus $1,416).

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

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APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: March 6, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

[8] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 252
PROPOSED COMMITTEE SUBSTITUTE S252-CSRV-24 [v.1]
4/24/2013 6:10:02 PM

Short Title: Increase Penalty/Controlled Substance Crimes. (Public)

Sponsors:

Referred to:

March 12, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN VIOLATIONS OF THE CONTROLLED SUBSTANCES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-108(b) reads as rewritten:

"(b) Any person who violates this section shall be guilty of a Class 1 misdemeanor. Provided, that if the criminal pleading alleges that the violation was committed intentionally, and upon trial it is specifically found that the violation was committed intentionally, such violations shall be a Class I ~~felony.~~felony unless one of the following applies:

(1) A person who violates subdivision (7) of subsection (a) of this section and also fortifies the structure, with the intent to impede law enforcement entry, (by barricading windows and doors) shall be punished as a Class I felon.

(2) A person who violates subdivision (14) of subsection (a) of this section shall be punished as a Class G felon."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 252:
Increase Penalty/Controlled Substance Crimes

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 24, 2013
Introduced by:	Sen. J. Davis	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S252-CSRV-24		

SUMMARY: ***This proposed committee substitute for Senate Bill 252 would make it a Class G felony for an employee of a medical practitioner, pharmacy, hospital or other institution to misappropriate any controlled substances he or she may have access to by virtue of the employment.***

CURRENT LAW: G.S. 90-108(14) makes it unlawful for any employee of a registrant or practitioner *"who is authorized to possess controlled substances or has access to controlled substances by virtue of his employment, to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use or to take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use any controlled substance which shall have come into his possession or under his care."* If the criminal pleading alleges that the violation was committed intentionally, and at trial it is specifically found that the violation was committed intentionally, the violation would be a Class I felony.

For purposes of the Controlled Substances Act, "practitioner" includes a physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance within the normal course of professional practice or research. The term also includes a pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance within the normal course of professional practice or research.

BILL ANALYSIS: Senate Bill 252 would increase the penalty that applies when an employee of a registrant or practitioner misappropriates any controlled substance that the person has access to by virtue of his or her employment. The bill would make the offense punishable as a Class G felony, rather than a Class I felony.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed.

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) Breath Analysis Results Preventive Maintenance. – The Department of Health and Human Services shall perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. – The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose,

including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

(b4) Repealed by Session Laws 2006-253, s. 16, effective December 1, 2006, and applicable to offenses committed on or after that date.

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer; except that a person charged with a violation of G.S. 20-141.4 shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath. However, if a breath sample shows an alcohol concentration of .08 or more, then requesting a blood sample shall be in the discretion of a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this subsection, and the person is charged with a violation of G.S. 20-141.4, then a law enforcement officer with probable cause to believe that the offense involved impaired driving or was an alcohol-related offense made subject to the procedures of G.S. 20-16.2 shall seek a warrant to obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a charge and is not an appealable issue.

(b6) The Department of Health and Human Services shall post on a Web page 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.

(c) Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, when a blood or urine test is specified as the type of chemical analysis by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the law enforcement officer's request for the withdrawal of blood or collecting the urine, the officer shall furnish it before blood is withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood or collecting urine, may be held criminally or civilly liable by reason of withdrawing the blood or collecting the urine, except that there is no immunity from liability for negligent acts or omissions. A person requested to withdraw blood or collect urine pursuant to this subsection may refuse to do so only if it reasonably appears that the procedure cannot be performed without endangering the safety of the person collecting the sample or the safety of the person from whom the sample is being collected. If the officer requesting the blood or urine requests a written justification for the refusal, the medical provider who determined the sample could not be collected safely shall provide written justification at the time of the refusal.

(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication

North Carolina General Statutes § 702 Testimony by experts

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply:

(1) The testimony is based upon sufficient facts or data.

(2) The testimony is the product of reliable principles and methods.

(3) The witness has applied the principles and methods reliably to the facts of the case.

(a1) A witness, qualified under subsection (a) of this section and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:

(1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.

(2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.

(b) In a medical malpractice action as defined in G.S. 90-21.11, a person shall not give expert testimony on the appropriate standard of health care as defined in G.S. 90-21.12 unless the person is a licensed health care provider in this State or another state and meets the following criteria:

(1) If the party against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

a. Specialize in the same specialty as the party against whom or on whose behalf the testimony is offered; or

b. Specialize in a similar specialty which includes within its specialty the performance of the procedure that is the subject of the complaint and have prior experience treating similar patients.

(2) During the year immediately preceding the date of the occurrence that is the basis for the action, the expert witness must have devoted a majority of his or her professional time to either or both of the following:

a. The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered, and if that party is a specialist, the active clinical practice of the same specialty or a similar specialty which includes within its specialty the

performance of the procedure that is the subject of the complaint and have prior experience treating similar patients; or

b. The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered, and if that party is a specialist, an accredited health professional school or accredited residency or clinical research program in the same specialty.

(c) Notwithstanding subsection (b) of this section, if the party against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness, during the year immediately preceding the date of the occurrence that is the basis for the action, must have devoted a majority of his or her professional time to either or both of the following:

(1) Active clinical practice as a general practitioner; or

(2) Instruction of students in an accredited health professional school or accredited residency or clinical research program in the general practice of medicine.

(d) Notwithstanding subsection (b) of this section, a physician who qualifies as an expert under subsection (a) of this Rule and who by reason of active clinical practice or instruction of students has knowledge of the applicable standard of care for nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants, or other medical support staff may give expert testimony in a medical malpractice action with respect to the standard of care of which he is knowledgeable of nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants licensed under Chapter 90 of the General Statutes, or other medical support staff.

(e) Upon motion by either party, a resident judge of the superior court in the county or judicial district in which the action is pending may allow expert testimony on the appropriate standard of health care by a witness who does not meet the requirements of subsection (b) or (c) of this Rule, but who is otherwise qualified as an expert witness, upon a showing by the movant of extraordinary circumstances and a determination by the court that the motion should be allowed to serve the ends of justice.

(f) In an action alleging medical malpractice, an expert witness shall not testify on a contingency fee basis.

(g) This section does not limit the power of the trial court to disqualify an expert witness on grounds other than the qualifications set forth in this section.

(h) Notwithstanding subsection (b) of this section, in a medical malpractice action as defined in G.S. 90-21.11(2)b. against a hospital, or other health care or medical facility, a person shall not give expert testimony on the appropriate standard of care as to administrative or other nonclinical issues unless the person has substantial knowledge, by virtue of his or her training and experience, about the standard of care among hospitals, or health care or medical facilities, of the same type as the hospital, or health care or medical facility, whose actions or inactions are the

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 285
PROPOSED COMMITTEE SUBSTITUTE S285-CSRK-36 [v.2]

4/24/2013 8:59:16 PM

Short Title: Eliminate ILAC Requirement. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT UNDER G.S. 20-139.1 THAT A LABORATORY CONFORM TO FORENSIC SPECIFIC REQUIREMENTS AND BE ACCREDITED BY AN ACCREDITING BODY THAT IS A SIGNATORY TO THE INTERNATIONAL LABORATORY ACCREDITATION COOPERATION (ILAC) MUTUAL RECOGNITION ARRANGEMENT AND TO ALLOW FOR THE ADMISSIBILITY OF A CHEMICAL ANALYSIS UNDER G.S. 20-139.1, PERFORMED BY AN INDIVIDUAL WHO QUALIFIES AS AN EXPERT WITNESS UNDER RULE 702 OF THE NORTH CAROLINA RULES OF EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

. . .

(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, ~~or~~ any ~~other~~ laboratory approved for chemical analysis by the Department of Health and Human ~~Services,~~Services, or any other individual from any other laboratory who can demonstrate competence pursuant to subsection (c2) of this section are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. The results shall be certified by the person who performed the analysis. The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report may be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) **Expert Witness.** - A chemical analysis of blood or urine, to be admissible under this section, shall be performed by ~~a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses.~~an individual who qualifies as an expert witness under Rule 702 of the North Carolina Rules of Evidence, as contained in G.S. 8C-1. In making its findings under G.S. 8C-1, Rule 702(a)(1)-(3), the court shall take judicial notice and apply all of the following:

(1) An analysis of the defendant's blood, breath, or urine qualifies as sufficient data under G.S. 8C-1, Rule 702(a)(1).

(2) The principles and methods previously accepted as reliable within the meaning of Rule 702(a)(2) of the North Carolina Rules of Evidence by the appellate courts of this State, including but not limited to, gas headspace chromatography, gas chromatography-mass spectrometry, liquid chromatography-mass spectrometry, and liquid chromatography-tandem mass spectrometry.

(3) As provided in subsection (e)(2) of this section, a defendant who has failed to timely object to the introduction of the affidavit into evidence has waived any and all objections to the admissibility of the affidavit, including the requirement under G.S. 8C-1, Rule 702(a)(3).

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and

b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement may be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed by ~~a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses.~~an individual who qualifies as an expert witness under Rule 702 of the North Carolina Rules of Evidence, as contained in G.S. 8C-1.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

. . .

(e1) Use of Chemical Analyst's ~~Affidavit in District Court.~~ Affidavit. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication and without the testimony of the analyst in any hearing or trial in ~~the District Court Division~~ any criminal proceeding of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. The affidavit shall include all of the following statements and information: (i) that the analyst is qualified by education, training, and experience to perform the analysis; (ii) the name and location of the laboratory where the analysis was performed; (iii) that performing this type of analysis is part of that individual's regular duties; (iv) that the tests were performed pursuant to the standards applicable to that individual's duties, and the laboratory accrediting body's standards for that discipline; and (v) that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

An affidavit completed in accordance with this subsection shall be sufficient to constitute prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the investigating officer and the district attorney in the prosecutorial district in which the criminal charges are pending.

(e2) Except as governed by subsection (c1), (c2), or (c3) of this section, the State can only use the provisions of subsection (e1) of this section if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the affidavit would be used of its intention to introduce the affidavit into evidence under this subsection and provides a copy of the affidavit to the defendant, and

(2) The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the affidavit would be used that the defendant objects to the introduction of the affidavit into evidence.

The failure to file a timely objection as provided in this subsection shall be deemed a waiver of the right to object to the admissibility of the affidavit. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence. The case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court. Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the affidavit.

. . . ."

SECTION 2. This act becomes effective December 1, 2013.

SENATE BILL 285:
Eliminate ILAC Requirement

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 24, 2013
Introduced by:	Sen. J. Davis	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S285-CSRK-36		Committee Counsel

SUMMARY: ***This act removes the requirement, for cases involving impaired driving and the introduction of evidence relating to alcohol concentration, that the analysis of a body fluid of the defendant was performed by a laboratory that is accredited by an accrediting agency that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Arrangement For Testing. This act becomes effective December 1, 2013.***

BILL ANALYSIS: This act amends the statute that provides the procedures for chemical analyses in impaired driving cases, including the use of affidavits, the admissibility of evidence, and other evidentiary provisions. Included in the amendments are:

- An elimination of the requirement that the chemical analysis must, in order to be admissible, have been performed by an ILAC-accredited laboratory. The act provides that the chemical analyst must meet the requirements for an expert witness under Rule 702 of the North Carolina Rules of Evidence.
- A requirement that specific statements and information to be included in an affidavit by the chemical analyst.
- A requirement that the court take judicial notice of certain matters in making findings relating to concluding that the chemical analyst is an expert witness.
- A provision that restates the current waiver provision under current law: if a defendant, upon notice of the intent to introduce the affidavit into evidence, fails to timely object to the admission of the affidavit, all objections to its admissibility are waived, including whether the principles and methods used to analyze for alcohol concentration were reliably applied to the facts of the case.

EFFECTIVE DATE: This act becomes effective December 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 149 (First Edition)

SHORT TITLE: Caylee's Law/Report Missing Children.

SPONSOR(S): Representatives Hastings, Jordan, Schaffer, and J. Bell

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Department of Public Safetly, Indigent Defense Services

EFFECTIVE DATE December 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: $136 - $1,618 per disposition
- Indigent Defense Services: Per case cost increase of $14 - $221 in district court
  Per case cost increase of $50 - $396 in superior court without a trial
  Per case cost increase of $134 - $1,046 in superior court with a trial
- Prison Section: No cost (excess bed space projected for at least five years)
- Community Corrections: Minimum of $327 - $3,703

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

House Bill 149 would create a series of new offenses involving the failure to report a missing child and would also expand the scope of several already existing offenses. Section 2 of the bill amends Article 39 of Chapter 14 of the General Statutes by adding a new section, G.S. 14-318.5(b), which makes failure to report the disappearance of a child to law enforcement a Class I felony for any person providing care to a child. Section 2 also creates a Class 1 misdemeanor offense for failure on the part of any person who suspects the disappearance of a child and who suspects the child may be in danger to report those suspicions to law enforcement.

G.S. 14-318.4 defines "grossly negligent omission" in providing care to or supervision of a child, and makes such omission a Class E felony if the omission results in serious bodily injury to the child or a Class H felony if the omission results in serious physical injury to the child. Section 3 of the bill expands the definition of "grossly negligent omission" to include the failure to report a missing child to law enforcement.

G.S. 14-401.22 makes the failure to report to law enforcement the death of person, secret burial or disposal of a dead human body a Class I felony if it is done with the intent to conceal the death of a person. Section 5 increases the penalty to a Class H felony if the offense involves the death of a person less than 16 years of age.

G.S. 14-225 makes it a Class 2 misdemeanor to make false reports to law enforcement. Section 6 amends this General Statute by making the offense a Class H felony if the false report involved the disappearance of a child or child victim of a Class A, B1, B2, or C felony offense.

Section 7 adds criminal punishments for failure to comply with G.S. 7B-301(b), requiring any person or institution who suspects that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment to report it to the authorities, and requiring a director of social services who receives a report of sexual abuse of a child in a child care facility to notify the State Bureau of Investigation of the report. The bill makes both offenses Class 1 misdemeanors. The following table illustrates changes the bill makes to existing statutes.

General Statute	Offense description	Current Class	Proposed Class
14-318.5(b)	Failure of caregiver to report the disappearance of a child to law enforcement	New Offense	Class I Felony
14-318.5(c)	Failure of any person who suspects the disappearance of a child and who suspects the child may be in danger to report those suspicions to law enforcement	New Offense	Class 1 MD
14-401.22	Failure to report to law enforcement the death of person, secret burial or disposal of a dead human body if it involves a child	Class I Felony	Class H Felony
14-225(b)	Making false reports to law enforcement that involves the disappearance of a child or child victim of a Class A, B1, B2, or C felony offense	Class 2 MD	Class H Felony
7B-301(b)	Failure to report to authorities a suspicion that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment must report it to the authorities	New Offense	Class 1 MD
7B-301(c)	Failure by a director of social services to notify the State Bureau of Investigation of a report of sexual abuse of a child in a child care facility	New Offense	Class 1 MD

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Since the bill creates four new offenses, increases the scope of two existing offenses, and elevates two offenses under certain circumstances, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

Judicial Branch

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

This bill creates four new criminal offenses, elevates two offenses, and expands the scope of two existing offenses. AOC does not have data upon which to estimate the number of charges that may occur due to the changes proposed in this bill. Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. For every person charged with these offenses, AOC estimates the average cost to the court would be $165.

Section 2 also creates a new Class I felony offense. While pleas for Class I felonies are sometimes handled in district court, many pleas and all trials for Class I felonies are handled in superior court. For every person charged with a Class I felony, AOC estimates the average cost to the court would be $365. Because this is a new offense, AOC has no way to estimate the number of charges that may result from this section of the bill.

Section 3 expands the scope of an existing Class H felony. In fiscal year 2011-12, approximately 12 defendants were charged with gross negligent omission in the care of a child that showed a reckless disregard for human life. Of these, 6 (50%) were convicted. It is not known how many additional charges or convictions may result from the proposed broadening of the current statute. For every person charged with this offense, AOC estimates the average cost to the court would be $501.

Section 3 also expands the scope of an existing Class E felony offense. In fiscal year 2011-12, approximately 23 defendants were charged with negligent child abuse resulting in serious bodily injury. Of these 12 (52%) were convicted. It is not known how many additional charges or convictions may result from the proposed broadening of the current statute. For every person charged with this offense, AOC estimates the average cost to the court would be $1,618.

Section 5 increases an existing Class I felony to a Class H felony if a child is involved. While pleas for both felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. The difference in cost to AOC between a Class I felony and a Class H felony is $136 (Class H per case cost of $501 minus Class I per case cost of $365 equals $136). In FY 2011-12 six defendants were charged with a violation of G.S. 14-401.22. Of those, two were convicted. AOC cannot estimate how many charges may result from the elevated charge because it is not known how many of the existing offenses involved the death of a child.

Section 6 elevates an existing offense for making a false, misleading, or unfounded report to law enforcement, currently a Class 2 misdemeanor under G.S. 14-225, to a Class H felony if a child is involved. In fiscal year 2011-12, approximately 1,246 defendants were charged with this offense. Of these, 301 (24%) were convicted. It is not known whether any of the 301 convictions under G.S. 14-225 involved conduct covered by the proposed Class H offense and could become Class H convictions under the proposed section. For every person charged with this elevated Class H felony, AOC estimates the average cost to the court would be $277, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($501 minus $88).

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. There were four new offenses created by this legislation; each of these new offenses would create new costs for IDS. IDS estimates that a new Class I felony would cost $221 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney for a Class I felony would be $396 per case if the case does not go to trial and $1,046 if it does.

Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. IDS estimates that these new Class 1 misdemeanors would cost $166 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney for these Class 1 misdemeanors would be $321 per case if the case does not go to trial and $847 if it does.

This bill also elevates the penalties for two offenses, which will lead to increased per case costs for IDS. IDS estimates that the cost of elevating a Class I felony offense to a Class H felony offense will result in an increase of $14 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost of a PAC attorney for this Class H felony would be $50 per case if the case does not go to trial and $134 if it does.

IDS estimates that the cost of elevating a Class 2 misdemeanor to a Class H felony will result in an increase of $69 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the increased cost of a PAC attorney for a Class H felony would be $125 per case if the case does not go to trial and $333 if it does.

This bill would also create additional grounds for existing offenses involving the failure to report a missing child. In general, creating additional grounds for an existing offense may increase the number of cases in which IDS has to provide appointed counsel. However, there is no way to quantify that impact.

Department of Public Safety –Prison Section

Since the bill creates four new offenses, increases the scope of two existing offenses, and elevates two offenses under certain circumstances, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	**No estimate available**				
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General post-release supervision and supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

Section 2 and Section 7 of this bill create a total of three new Class 1 misdemeanor offenses. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced to community supervision under the proposed bill.

Section 2 also creates a new Class I felony offense. In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average lengths of intermediate and community punishment imposed for this offense class were 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is $2,831 (780 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is $2,396 (660 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

Section 3 expands the scope of an existing Class E felony offense. In FY 2011-12, 57% of Class E felony offenders received active sentences; 43% received intermediate sentences. All active sentences result in twelve months of post-release supervision (PRS). The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[6] The average lengths of intermediate punishment imposed for this offense class was 34 months. The average cost to community corrections for any individual convicted of a Class E felony and who receives an intermediate sentence is $3,703 (1,020 days times $3.63 per day). It is not known how many additional convictions may result from the proposed broadening of the current statute.

Section 3 also expands the scope of an existing Class H felony. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[7] The average lengths of intermediate and community punishment imposed for this offense class were 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is $3,158 (870 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is $2,831 (780 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

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[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[6] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

[7] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

Section 5 elevates an existing Class I felony to a Class H felony if a child is involved. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. Since both Class H and Class I felonies require nine months of post-release supervision, there will be no additional cost to community corrections for individuals receiving active sentences. For every individual convicted of a Class H felony and who receives an intermediate sentence, it will cost community corrections an addition $327, which is the difference between the current Class I felony and the new Class H felony ($3,158 minus $2,831). For every individual convicted of a Class H felony and who receives a supervised community sentence, it will cost community corrections an addition $435, which is the difference between the current Class I felony and the new Class H felony ($2,831 minus $2,396).

Section 6 elevates an existing Class 2 misdemeanor to a Class H felony if a child is involved. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. Only felonies require post-release supervision (PRS) for active sentences. All active Class H felony sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[8] For every individual convicted of a Class H felony who receives an intermediate sentence, it will cost community corrections an addition $1,416, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($3,158 minus $1,742). For every individual convicted of a Class H felony who receives a supervised community sentence, it will cost community corrections an addition $1,415, which is the difference between the current Class 2 misdemeanor and the new Class H felony ($2,831 minus $1,416).

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Maggie Morrissey
Kristine Leggett

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: March 6, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

[8] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-25 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Elia Dew	Delco	Rabon
2. Trevor Edwards.	Goldsboro	Parmon.
3. Aja White	Chapel Hill	Stein
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/25/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. JUSTIN OWENS
4. BILLY FRITSCHER
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

April 25, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael Smallwood	SOG Daily Bulletin
Schquthia Peacock	NCNA Nurse of the day
Andy Chase	KMA
Amy Whited	NCMS
Chyn Bryant	NCMS
[illegible] Robinson	NCPMA
Kelli Ivey	Duke Energy
[illegible]	NCNA
Ken Melton	K.M.A.

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

April 25, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCRMA
D. Varnell	NCSBI
Thomas Caves	NCSBI
Elizabeth Hudgins	CFTF
Kim Mc[illegible]	Benchmarks
Sarah Wolfe	MWC LLC
Peg Doerr	Conf. of DAs
Rus Marvin	DIST ATTY
Alex Miller	KLG
Lori Ann Havens	LAWTA

Senate Committee on Judiciary II
Tuesday, April 30, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 101	GSC Technical Corrections 2013.	Senator Hartsell
SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 574	Appearance Bond Valid For Certain Time Period.	Senator Randleman

Adjournment

Senate Judiciary II Committee
Tuesday, April 30, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, April 30, 2013 in room 1124 of the Legislative Building. Andrew Cavari of Garner, Odom Williford of Chapel Hill, and Katilyn Hinson of Youngsville served as pages. Senator Daniel presided as chair.

S.B. 409 – Amend Civil No-Contract Laws

This bill was calendared for discussion only. Senator Tarte was recognized to explain the bill. Senator Kinnaird moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Hal Pell, a staff attorney with the Research Division, was recognized to explain correlated federal issues. Murphie Chappell, representing NC Coalition Against Sexual Assault, was recognized to answer questions and warned that the bill will cause the loss of about $3 million of federal funds. A copy of PCS and the summary is attached.

S.B. 101 – GSC Technical Corrections 2013

Bly Hall, staff to the General Statutes Commission, was recognized to explain the bill and answer questions. Senator Kinnaird moved to adopt the PCS for discussion and the motion carried. The PCS contains corrections of a technical nature to the General Statutes and session laws as recommended by the General Statutes Commission, such as correcting typos, punctuation, redlining; makes conforming changes; and updates references. Senator Davis moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

S.B. 574 – Appearance Bond Valid for Certain Time Period

This bill was removed from the agenda.

The meeting adjourned at 10:36 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

Corrected #2: S101 - GSC Technical Corrections 2013 has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 30, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 101	GSC Technical Corrections 2013.	Senator Hartsell
SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 574	Appearance Bond Valid For Certain Time Period.	Senator Randleman

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk
Reading Clerk

Corrected #1: S610 - Presumed Shared Parenting has been removed from the agenda.

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AND
BILL SPONSOR NOTICE

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Tuesday	April 30, 2013	10:00 AM	1124/1224 LB

The following will be considered:

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SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 574	Appearance Bond Valid For Certain Time Period.	Senator Randleman

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk ____

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AND
BILL SPONSOR NOTICE

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Tuesday	April 30, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 574	Appearance Bond Valid For Certain Time Period.	Senator Randleman
SB 610	Presumed Shared Parenting.	Senator Clodfelter

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, April 30, 2013

Senator Daniel,
submits the following with recommendations as to passage:

FAVORABLE

SB **101** GSC Technical Corrections 2013.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Fletcher Hartsell will handle SB 101

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

CORRECTED REPORT #1

Tuesday, April 30, 2013

Senator Daniel,
submits the following with recommendations as to passage:

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

SB **101** GSC Technical Corrections 2013.

Draft Number:	S101-PCS75298-MN-3
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Fletcher Hartsell will handle SB 101

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 101*
PROPOSED COMMITTEE SUBSTITUTE S101-CSMN-3 [v.1]
4/29/2013 4:05:30 PM

Short Title: GSC Technical Corrections 2013. (Public)

Sponsors:

Referred to:

February 20, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 9 of Chapter 7A of the General Statutes reads as rewritten:

"Article 9.

District Attorneys and ~~Judicial~~ Prosecutorial Districts."

SECTION 2. G.S. 13-1 reads as rewritten:

"**§ 13-1. Restoration of citizenship.**

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate, of a probationer, or of a parolee by the ~~Division of Adult Correction of the Department of Public Safety;~~ agency of the State having jurisdiction of that person or of a defendant under a suspended sentence by the court.

(2) The unconditional pardon of the offender.

(3) The satisfaction by the offender of all conditions of a conditional pardon.

(4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

(5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon."

SECTION 3.(a) G.S. 14-17(a) reads as rewritten:

"(a) 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 18 years of age at the time of the murder shall be punished

~~with imprisonment in the State's prison for life without parole.~~in accordance with Part 2A of Article 81B of Chapter 15A of the General Statutes."

SECTION 3.(b) G.S. 15A-1340.17(c) reads as rewritten:

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

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

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

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

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

PRIOR RECORD LEVEL

	I	II	III	IV	V	VI	
	0-1 Pt	2-5 Pts	6-9 Pts	10-13 Pts	14-17 Pts	18+ Pts	
A	Life Imprisonment ~~Without Parole or Death~~ With Parole or Without Parole, or Death, as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	240-300	276-345	317-397	365-456	Life Imprisonment Without Parole		Aggravated
B1	192-240	221-276	254-317	292-365	336-420	386-483	PRESUMPTIVE
	144-192	166-221	190-254	219-292	252-336	290-386	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	180-225	207-258	238-297	273-342	314-393	Aggravated
B2	125-157	144-180	165-207	190-238	219-273	251-314	PRESUMPTIVE
	94-125	108-144	124-165	143-190	164-219	189-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	83-104	96-120	110-138	127-159	146-182	Aggravated
C	58-73	67-83	77-96	88-110	101-127	117-146	PRESUMPTIVE
	44-58	50-67	58-77	66-88	76-101	87-117	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	73-92	84-105	97-121	111-139	128-160	Aggravated
D	51-64	59-73	67-84	78-97	89-111	103-128	PRESUMPTIVE
	38-51	44-59	51-67	58-78	67-89	77-103	Mitigated

	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	33-41	38-48	44-55	50-63	Aggravated
E	20-25	23-29	26-33	30-38	35-44	40-50	PRESUMPTIVE
	15-20	17-23	20-26	23-30	26-35	30-40	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-23	21-27	25-31	28-36	33-41	Aggravated
F	13-16	15-19	17-21	20-25	23-28	26-33	PRESUMPTIVE
	10-13	11-15	13-17	15-20	17-23	20-26	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	14-18	17-21	19-24	22-27	25-31	Aggravated
G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE
	8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

SECTION 4. G.S. 15A-145.5 reads as rewritten:

"**§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

(1) A Class A through G felony or a Class A1 misdemeanor.

(2) An offense that includes assault as an essential element of the offense.

(3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

(5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.

(6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).

(7) An offense under G.S. 14-401.16.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

....

(c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic ~~violation, and was convicted of a nonviolent misdemeanor or nonviolent felony that is eligible pursuant to subsection (b) of this section.~~ violation. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other 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 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 a name-based State and national criminal history record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Justice for any outstanding warrants on pending criminal cases, 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 the petitioner are outstanding.

Upon filing of the petition, 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 thereto and shall be duly notified as to the date of the hearing of the petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to 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 presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial.

...."

SECTION 5. G.S. 20-183.2(a1) reads as rewritten:

"(a1) Safety Inspection Exceptions. – The following vehicles shall not be subject to a safety inspection pursuant to this Article:

(1) Historic vehicles, as ~~defined~~ described in ~~G.S. 20-79.4(b)(63).~~ G.S. 20-79.4(b)(88).

(2) Buses titled to a local board of education and subject to the school bus inspection requirements specified by the State Board of Education and G.S. 115C-248."

SECTION 6. G.S. 28A-2-6(e) reads as rewritten:

"(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, ~~Rules 4.5,~~ Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 56, and 65 of G.S. 1A-1, the Rules of Civil Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided in G.S. 28A-2-7. In applying these Rules to an estate proceeding pending before the clerk of superior court, the term "judge" shall mean "clerk of superior court.""

SECTION 7.(a). G.S. 74-54(b) reads as rewritten:

"(b) The applicant shall have the option of filing a separate bond for each operating permit or of filing a blanket bond covering all mining operations within the State for which the applicant holds a permit. The amount of each bond shall be based upon the area of affected land to be reclaimed under the approved reclamation plan or plans to which the bond pertains, less any area where reclamation has been completed and released from coverage by the Department, pursuant to G.S. 74-56, or based on any other criteria established by the ~~North Carolina Mining and Energy~~ Commission. The Department shall set the amount of the required bond in all cases, based upon a schedule established by the ~~North Carolina Mining and Energy~~ Commission."

SECTION 7.(b) G.S. 74-54.1(c) reads as rewritten:

"(c) The Department shall annually report on or before ~~1 September~~ September 1 to the Environmental Review Commission, the Fiscal Research Division, and the ~~North Carolina Mining and Energy~~ Commission on the cost of implementing this Article. The report shall include the fees established, collected, and disbursed under this section and any other information requested by the General Assembly or the Commission."

SECTION 7.(c) G.S. 74-67 reads as rewritten:

"**§ 74-67. Exemptions.**

The provisions of this Article shall not apply to those activities of the Department of Transportation, nor of any person, firm, or corporation acting under contract with ~~said~~ the Department of Transportation, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the public road systems of North Carolina; provided, that this exemption shall not become effective until the Department of Transportation shall have adopted reclamation standards applying to such activities and such standards have been approved by the ~~North Carolina Mining and Energy~~ Commission. The provisions of this Article shall not apply to mining on federal lands under a valid permit from the U.S. Forest Service or the U.S. Bureau of Land Management."

SECTION 8. G.S. 90B-3 reads as rewritten:

"**§ 90B-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Social Work Certification and Licensure Board.

~~(2) Licensed Clinical Social Worker. – A person who is competent to function independently, who holds himself or herself out to the public as a social~~

~~worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.~~

(3) Certified Master Social Worker. – A person who is certified under this Chapter to practice social work as a master social worker and is engaged in the practice of social work.

(4) Certified Social Work Manager. – A person who is certified under this Chapter to practice social work as a social work manager and is engaged in the practice of social work.

(5) Certified Social Worker. – A person who is certified under this Chapter to practice social work as a social worker and is engaged in the practice of social work.

(6) Clinical Social Work Practice. – The professional application of social work theory and methods to the biopsychosocial diagnosis, treatment, or prevention, of emotional and mental disorders. Practice includes, by whatever means of communications, the treatment of individuals, couples, families, and groups, including the use of psychotherapy and referrals to and collaboration with other health professionals when appropriate. Clinical social work practice shall not include the provision of supportive daily living services to persons with severe and persistent mental illness as defined in G.S. 122C-3(33a).

(6a) Licensed Clinical Social Worker. – A person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.

(6b) Licensed Clinical Social Worker Associate. – A person issued an associate license to provide clinical social work services pursuant to G.S. 90B-7(f).

(7) Practice of Social Work. – To perform or offer to perform services, by whatever means of communications, for other people that involve the application of social work values, principles, and techniques in areas such as social work services, consultation and administration, and social work planning and research.

(8) Social Worker. – A person certified, licensed, or associate licensed by this Chapter or otherwise exempt under G.S. 90B-10."

SECTION 9. G.S. 115D-12 reads as rewritten:

"**§ 115D-12. Each institution to have board of trustees; selection of trustees.**

(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies. No member of the General Assembly may be appointed to a local board of trustees for a community college.

Group One – four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two – four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is

composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three – four trustees, appointed by the Governor.

Group Four – the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to ~~G.S. 115D~~Chapter 115D of the General Statutes shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in ~~G.S. 115D-12(a), Group Four.~~subsection (a) of this section, Group Four.

(b1) No person who has been employed full time by the community college within the prior 5 years and no spouse or child of a person currently employed full time by the community college shall serve on the board of trustees of that college.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term."

SECTION 10. G.S. 120-12.1 reads as rewritten:

"**§ 120-12.1. Reports on vacant positions in the Judicial Department and ~~three~~ two other departments.**

The Judicial Department, the Department of Justice, and the Department of Public Safety shall each report by February 1 of each year to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on all positions within that department that have remained vacant for 12 months or more. The report shall include the original position vacancy dates, the dates of any postings or repostings of the positions, and an explanation for the length of the vacancies."

SECTION 11. G.S. 122C-22(a) reads as rewritten:

"(a) ~~The~~ All of the following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office ~~practice;~~practice.

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance ~~abusers;~~abusers.

(3) State and federally operated ~~facilities;~~facilities.

(4) Adult care homes licensed under Chapter 131D of the General ~~Statutes;~~Statutes.

(5) Developmental child care centers licensed under Article 7 of Chapter 110 of the General ~~Statutes;~~Statutes.

(6) Persons subject to licensure under rules of the Social Services Commission;

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation ~~Services;~~Services.

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in ~~G.S. 122C-3(14);~~G.S. 122C-3(14).

(9) Twenty-four-hour nonprofit facilities established for the purposes of shelter care and recovery from alcohol or other drug addiction through a 12-step, self-help, peer role modeling, and self-governance ~~approach;~~approach.

(10) Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Division of Adult Correction of the Department of Public Safety, as described in ~~G.S. 148-19.1; and~~G.S. 148-19.1.

(11) A charitable, nonprofit, faith-based, adult residential treatment facility that does not receive any federal or State funding and is a religious organization exempt from federal income tax under section 501(a) of the Internal Revenue ~~Code; [and]~~Code.

(12) A home in which up to three adults, two or more having a disability, co-own or co-rent a home in which the persons with disabilities are receiving three or more hours of day services in the home or up to 24 hours of residential services in the home. The individuals who have disabilities cannot be required to move if the individuals change services, change service providers, or discontinue services."

SECTION 12. G.S. 136-89.210(1) reads as rewritten:

"(1) ~~Reserved.~~"

SECTION 13. G.S. 143B-1100(a) reads as rewritten:

"(a) There is hereby created the Governor's Crime Commission of the Department of Public Safety. The Commission shall consist of ~~36~~37 voting members and ~~six~~ five nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or the Chief Justice's designee), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of Public Safety (or the Secretary's designee), and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a "high crime area"), three police executives (one of whom shall be from a "high crime area"), eight citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one advocate for victims of all crimes, one representative from a domestic violence or sexual assault program, one representative of a "private juvenile delinquency program," and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Deputy Director of the Division of Juvenile Justice of the Department of Public Safety who is responsible for Intervention/Prevention programs, the Deputy Director of the Division of Juvenile Justice of the Department of Public Safety who is responsible for Youth Development programs, the Section Chief of the Section of Prisons of the Division of Adult Correction and the Section Chief of the Section of Community Corrections of the Division of Adult Correction."

SECTION 14.(a) G.S. 163-82.12 reads as rewritten:

"**§ 163-82.12. Promulgation of guidelines relating to computerized voter registration.**

The State Board of Elections shall make all guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These guidelines shall include provisions for all of the following:

...

(8b) Notifying voter-registration applicants whose drivers license or last four digits of social security number does not result in a validation, attempting to resolve the discrepancy, initiating investigations under G.S. 163-33(3) or challenges under Article 8 of this Chapter where warranted, and notifying any voters of the requirement under ~~G.S. 163-166.2(b2)~~ G.S. 163-166.12(b2) to present identification when voting.

...."

SECTION 14.(b) G.S. 163-166.12 reads as rewritten:

"**§ 163-166.12. Requirements for certain voters who register by mail.**

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b1) Notation of Identification Proof. – The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

(b2) Voting When Identification Numbers Do Not Match. – Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163-82.12 did not result in a match, and the number has not been otherwise validated by the board of elections, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot

is voted in person or absentee. If that identification is provided and the board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted. If the individual registers and votes under G.S. 163-82.6A, the identification documents required in that section, rather than those described in subsection (a) or (b) of this section, apply.

(c) The Right to Vote Provisionally. – If an individual is required under subsection (a), (b), or (b2) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. – This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration. If any individual's number does not match, the individual shall provide identification as required in subsection (b2) of this section in the first election in which the individual votes.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 15. The introductory language of Section 5 of S.L. 2012-11 reads as rewritten:

"**SECTION 5.** ~~G.S. 160A-60(a)~~ G.S. 160A-58.60(a) reads as rewritten:"

SECTION 16. The introductory language of Section 2(b) of S.L. 2012-120 reads as rewritten:

"**SECTION 2.(b)** ~~G.S. 140-3.15(g)~~ G.S. 140-5.13(g) reads as rewritten:"

SECTION 17. This act is effective when it becomes law.

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MEMORANDUM

To: Senate Committee on Judiciary II

From: General Statutes Commission

Re: **SB 101 (GSC Technical Corrections 2013)** (PCS)

Date: April 26, 2013

General Comments

The proposed committee substitute for this bill contains corrections of a technical nature to the General Statutes and session laws that are recommended by the General Statutes Commission. These amendments correct typographical, punctuation, redlining, and other obvious drafting and stylistic errors, make conforming changes, and update references and formatting.

Specific Comments

Section 1 makes a conforming change to the **title of Article 9 of Chapter 7A of the General Statutes**, from "Judicial Districts" to "Prosecutorial Districts." The article does not in fact deal with judicial districts but with district attorneys. The original title was "Solicitors and Solicitorial Districts." In 1973, the General Assembly replaced "solicitor" with "district attorney" but changed "solicitorial district" to "judicial district." See 1973 Reg. Sess. c. 47. Two years later, the General Assembly amended Article 9 to change "judicial district" to "prosecutorial district" throughout the article but failed to make a conforming change to the article title. See 1975 Reg. Sess. c. 956. Since that time, the title of Article 9 has continued to read "Judicial Districts" while the text of the article refers to "prosecutorial districts."

Section 2 amends **G.S. 13-1** to change the reference to a specific State agency having jurisdiction over the person of an inmate, probationer, or parolee to a generic reference. The amendment (i) makes it clear that a discharge by a predecessor agency continues to be included and (ii) eliminates the need to make a conforming change to this section if there is a future reorganization of State government.

Subsections 3(a) and **3(b)** make related amendments to **G.S. 14-17(a)** and **G.S. 15A-1340.17(c)**, respectively, to conform to other changes in the law made by S.L. 2012-148. That act provided new sentencing procedures for minors that included a possible sentence of life imprisonment with parole in cases where the minor would formerly have been subject to a mandatory sentence of life without parole. The amendment to G.S. 14-17(a) replaces a reference

to the former mandatory sentence for minors who commit a first degree murder with a reference to the part of the General Statutes that contain the new sentencing procedures. The amendment to G.S. 15A-1340.17(c) conforms a similar reference in the felony sentencing chart by adding a reference to life imprisonment with parole "as Established by Statute."

Section 4 amends **G.S. 15A-145.5(c)** to remove an incorrect cross-reference that would not actually be necessary to the meaning of the subsection if it were corrected. The introductory paragraph of G.S. 15A-145.5(c) refers to filing a petition to expunge "a nonviolent misdemeanor or nonviolent felony conviction" by a person who was convicted of a "nonviolent misdemeanor or nonviolent felony" that is eligible for expunction under "subsection (b) of this section." First, the intended reference was to subsection (a), which defines the terms "nonviolent misdemeanor" and "nonviolent felony." Second, the sentence does not need both references to "nonviolent misdemeanor" and "nonviolent felony"; the second reference is essentially duplicative.

Section 5 amends **G.S. 20-183.2(a1)** in two ways. First, it corrects a citation. The special license plate for historical vehicles was formerly in G.S. 20-79.4(b)(63), but it was moved and is now in G.S. 20-79.4(b)(88). Second, the amendment changes "defined" to "described" to more accurately reflect what is done in G.S. 20-79.4(b)(88). G.S. 20-79.88 is not actually a definition, although it does set out the qualifications for a "historical vehicle."

Section 6 amends **G.S. 28A-2-6(e)** to correct a typographical error in the punctuation. The reference to "Rules 4.5, 6(a) ... of ... the Rules of Civil Procedure" is incorrect. There is no "Rule 4.5." The period should have been a comma and the sentence should read, "Rules 4, 5, 6(a) ... of ... the Rules of Civil Procedure."

Subsections 7(a), 7(b), and 7(c) amend **G.S. 74-54(b), 54.1(c), and 67**, respectively, to conform references to the Mining and Energy Commission. In these three statutes, the full name of the Commission is used. It is, however, unnecessary to use anything but "Commission" in these places, because the definitions section (G.S. 74-49) in the article in which these statutes appear (Article 7 of Chapter 74 of the General Statutes) defines "Commission" to mean the North Carolina Mining and Energy Commission. This is a common drafting device used to avoid the need to repeat the full name throughout the article. Other sections in this article use the term "Commission" without qualification. Replacing the Commission's full name in these three statutes with the defined term conforms to usage in the rest of the article.

In addition, subsection 7(b) conforms the form of the date from English style to American style in G.S. 74-54.1(c), and subsection 7(c) makes a stylistic update in G.S. 74-67 by replacing the older "said" with "the."

Section 8 amends **G.S. 90B-3** to move the definition of the term "Licensed Clinical Social Worker" to its proper location in alphabetical order.

Section 9 updates the citation style in **G.S. 115D-12(a) and (b)**.

Section 10 conforms the catchline of **G.S. 120-12.1** to the content of the section by changing the reference to "three" other departments to "two" others. The section formerly

required reports from the Judicial Department and the Departments of Correction, Justice, and Crime Control and Public Safety. When the latter two departments were merged with the Department of Juvenile Justice to create the Department of Public Safety, the text of this section was amended to conform to the consolidation but the catchline was not.

Section 11 permanently corrects a problem with the conjunctions in **G.S. 122C-22(a)** by modernizing the style. When subdivision (12) was added to G.S. 122C-22(a), the conjunction was not moved to match. The current preferred drafting style for lists takes care of this type of problem by eliminating conjunctions, using periods rather than semicolons, and indicating in the lead-in language whether the entries in the list are conjunctive or disjunctive.

Section 12 amends **G.S. 136-89.210(1)** to correct a redlining error. G.S. 136-89.210 was enacted by S.L. 2008-225. Subdivision (1) was intended to be reserved for future codification, so the number (1) was included in the new section with the word "Reserved" beside it. The word "Reserved" was, however, inadvertently underlined, which had the effect of enacting that word as part of the statute. Normally, "Reserved" used in this fashion (as a placeholder) is an editorial insertion by the publisher of the General Statutes. When statutory text is later added at the reserved locations, the editorial insertion does not need to be expressly deleted (since it has not been legislatively inserted), so the customary practice is not to show it as lined out. If, however, the word "Reserved" is actually inserted by a session law, the word does later need to be expressly stricken out. There is obvious potential for confusion, since there is no way to tell from the statute itself whether "Reserved" is an editorial insertion or a legislative addition. To avoid confusion over cases when the word "Reserved" needs to be shown as stricken out and when it can simply be dropped as an editorial insertion, this amendment deletes it as a legislative insertion. Please note that the word "Reserved" will continue to appear at subdivision (1), but it will simply be the normal, editorially inserted, reserved line that does not need to be legislatively deleted.

Section 13 amends the introductory language of **G.S. 143B-1100(a)** to conform the introductory language's recitation of the numbers of voting and nonvoting members of the Governor's Crime Commission to the actual list set out in subsection (a).

Subsections 14(a) and **(b)** amend **G.S. 163-82.12(8b)** and **G.S. 163-166.2(b1)**, respectively. Subsection 14(a) amends G.S. 163-82.12(8b) to correct a citation. The reference to "G.S. 163-166.2(b2)" is incorrect; there is no subsection (b2) in G.S. 163-166.2. The intended reference was to G.S. 163-166.12(b2). Subsection 14(b) in turn amends G.S. 163-166.12(b1) to add a subsection catchline because all other subsections in that statute have subsection catchlines.

Section 15 corrects a typographical error in the amendatory language of Section 5 of S.L. 2012-11.

Section 16 corrects a typographical error in the amendatory language of Section 2(b) of S.L. 2012-120.

The last section of this bill makes the bill effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 409
PROPOSED COMMITTEE SUBSTITUTE S409-CSRK-38 [v.3]

4/29/2013 11:38:33 AM

Short Title: Amend Civil No-Contact Laws. (Public)

Sponsors:

Referred to:

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND PROCEDURES AND TO PROVIDE FOR COSTS AND ATTORNEYS FEES IN CIVIL NO-CONTACT ORDER CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-2(b) reads as rewritten:

"(b) No court costs shall be assessed for the filing or service of the complaint, or the service of any ~~orders.~~orders unless the court determines any of the following:

(1) The plaintiff willfully failed to appear to prosecute the action.

(2) The plaintiff initiated the action for an improper purpose to harass the defendant.

(3) The plaintiff filed the action knowing that he or she was not the victim of unlawful conduct."

SECTION 2. G.S. 50C-7 reads as rewritten:

"**§ 50C-7. Permanent civil no-contact order.**

Upon a finding that the victim has suffered an act of unlawful conduct committed by the respondent, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no-contact order shall be issued without notice to the respondent."

SECTION 3. G.S. 50C-8(a) reads as rewritten:

"(a) A temporary civil no-contact order shall be effective for not more than 10 days as the court fixes, unless within the time so fixed the temporary civil no-contact order, for good cause shown, is extended for a like period or a longer period if the respondent consents. The reasons for the extension shall be stated in the temporary order. ~~In case~~ If a temporary ex parte civil no-contact ~~order~~ order:

(1) ~~is~~ Is granted without notice and a motion for a permanent civil no-contact order is made, it shall be set down for hearing ~~at the earliest possible time and takes precedence over all matters except older matters of the same character.~~within 10 days from the date of the motion.

(2) Is denied, the trial on the plaintiff's claim for a civil no-contact order shall be set down for hearing within 30 days from the date of the denial.

When the motion for a permanent civil no-contact order comes on for hearing, the complainant may proceed with a motion for a permanent civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the temporary civil no-contact order. On two days' notice to the complainant or on such shorter notice to that party as the judge may prescribe, the respondent may appear and move its dissolution or modification. In that event the

judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require."

SECTION 4. G.S. 50C-5(b)(7) reads as rewritten:

"(b) The court may grant one or more of the following forms of relief in its orders under this Chapter:

...

(7) Order other relief deemed necessary and appropriate by the ~~court.~~court, including assessing attorneys' fees to either party."

SECTION 5. This act becomes effective October 1, 2013, and applies to actions commenced on or after that date.

SENATE BILL 409:
Amend Civil No-Contact Laws

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 26, 2013
Introduced by:	Sen. Tarte	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S409-CSRK-38		Committee Counsel

SUMMARY: ***This proposed committee substitute provides for the court to assess attorneys' fees, and costs against the plaintiff for filing or service of the complaint under certain conditions, and amends the procedure for the setting of hearings. This act becomes effective October 1, 2013, and applies to actions commenced on or after that date.***

BILL ANALYSIS:

(1) The act allows the court to

- Assess attorneys' fees against either party.
- Assess costs to the plaintiff for the filing or service of the complaint, if any of the following apply:
    - Willful failure to prosecute the action.
    - The action was initiated for an improper purpose to harass the defendant.
    - Knowledge that the plaintiff was not the victim of unlawful conduct.

(2) The act also provides that:

- If a temporary civil no-contact order is granted, then a hearing shall be set for a permanent civil no-contact order no later than 10 days from the date of the motion for a permanent order.
- If a request for a temporary, ex parte civil no-contact order is denied, then the trial on the plaintiff's request for a civil no-contact order shall be set down for hearing within 30 days of the date of the denial.

EFFECTIVE DATE: This act becomes effective October 1, 2013, and applies to actions commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 574
PROPOSED COMMITTEE SUBSTITUTE S574-CSRK-30 [v.1]
4/22/2013 7:19:49 PM

Short Title: Appearance Bond Valid For Certain Time Period. (Public)

Sponsors:

Referred to:

April 2, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN APPEARANCE BOND FOR A DEFENDANT CHARGED WITH CERTAIN MISDEMEANORS IS ONLY VALID FOR A CERTAIN PERIOD OF TIME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534(h) reads as rewritten:

"(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is automatically terminated at an earlier time ~~if:~~if any of the following occur:

(1) A judge authorized to do so releases the obligor from his ~~bond; or~~bond.

(2) The principal is surrendered by a surety in accordance with G.S. ~~15A-540; or~~15A-540.

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. ~~15A-544.3; or~~15A-544.3.

(4) Prayer for judgment has been continued indefinitely in the district ~~court.~~court.

(5) Thirty-six months have passed from the date of release on a bail bond where the defendant is charged with a misdemeanor, except for an offense involving impaired driving, as defined in G.S. 20-4.01(24a). When the obligation automatically terminates for the obligor under this subdivision, the judicial official shall determine whether the defendant is again entitled to release and, if so, upon what conditions."

SECTION 2. This act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.

SENATE BILL 574: Appearance Bond Valid For Certain Time Period

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 22, 2013
Introduced by:	Sen. Randleman	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	PCS to First Edition S574-CSRK-30		

SUMMARY: ***This act amends the law which provides for the termination of an obligor on an appearance bond by making the termination automatic on the occurrence of the listed events, and adds a new event to the list. The act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.***

BILL ANALYSIS: The current law provides when the person providing an appearance bond is released from the obligation. The act would amend the law to:

- Provide that the release is "automatic" upon the occurrence of the event, so that the obligor would be legally entitled to the return of the bond immediately upon the happening of the event.
- Add to the statutory list a new event: Thirty-six months have passed from the date of release on a bail bond where the defendant is charged with a misdemeanor. The provision would not apply if the offense involving impaired driving. The court would determine any new bond requirement based upon the misdemeanor charge.

EFFECTIVE DATE: The act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 4-30 TIME: 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Andrew Cavari	Garner	Barefoot
2. Odom Williford	Chapel Hill	Nesbitt
3. Katilyn Hinson	youngsville	barefoot
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 04/30/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 23, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mike Mangum	NCBAA
Mark Black	NCBAA
John Hardy	NTFS
Jim Kendall	UCDC/UCCA
Reggie Holley	NEBRA / The Longmire Group
Joy Hicks	NCDA&CS
Ted Bass	NCACC
Shannon Jones	N.C. Dairy Alliance

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

April 23, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Penny Ruffin	School of Gov
Dick Zimmer	NCAO
Pam Sayre	NCAO
Mildred Spearman	NCAOC
Amanda Horaker	Troutman Sanders
D Coe	NCDENR
PHIL BERGER JR	DA. 17A
Murphie Chappell	NCCIASA
Ashley Bass	NCCAJA
Peg Dorer	Conf of DAs
Tom MAHER	JDS

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

April 30, 2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Floyd Lewis	General Statutes Commission
P. Bly Hull	ditto
Pat Dorn	Conf of DAs
Amanda Honaker	Trautman Sanders
Murphie Chappell	NCCMSA
Fred Baggett	Chief of Police

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

April 30, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Penny Huffi	School of Gov.
Alan Bodger	CSS
Weldon Jones	Jones Pope
Debbie Taylor	ICG
John Hunter	MTS
Todd Balon	NC Advocates for Justice
RSparko	NC Justice Cntr
Beth Young	Fun. Prot. Law Cntr.
Colleen Kachuck	NCCADV
Preston Howard	NCMA

Senate Committee on Judiciary II
Thursday, May 2, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 285	Eliminate ILAC Requirement.	Sen. J. Davis
SB 443	Abandoned Firearms to State Control.	Sen. Brock
SB 574	Appearance Bond Valid For Certain Time Period.	Sen. Randleman
SB 634	Increase Penalties/Gas Theft.	Sen. Newton

Adjournment

Frank Bowden - Fortress Systems

Senate Judiciary II Committee
Thursday, May 2, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, May 2, 2013 in room 1124 of the Legislative Building. Christine Long of Raleigh, Annie Linn Johnson of Fayetteville, and Mary McCall Leland of Tarboro served as pages. Senator Daniel presided as chair.

School Bus Cameras as a Deterrent Demonstration

Senator Tucker was recognized to introduce Frank Bowden, Vice President of Marketing – Fortress Systems. Mr. Bowden presented a Rowan County video which captured violations that led to convictions of drivers passing stopped school buses. Senator Tucker suggested that the systems would be affordable if the replacement mileage of school buses is raised. A copy of the Fortress materials is attached.

S.B. 634 – Increase Penalties/Utilities Theft

Senator Newton was recognized to explain the bill. Senator Randleman moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would increase the penalties for interfering with electric, gas, or water lines and meters. Senator Bingham moved for a favorable report as to the PCS and the motion carried. A copy of the PCS, the summary, and the incarceration note is attached.

S.B. 443 – Amend Abandoned Firearms Law

Senator Brock was recognized to explain the bill and Senator Allran moved to adopt the PCS for discussion. The motion carried. The PCS would authorize a judge to order that abandoned firearms can be sold at a public auction to persons licensed as firearms collectors, importers, or manufacturers. Hal Pell, a staff attorney with the Research Division, was recognized to answer questions. Senator Bingham moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

S.B. 574 – Appearance Bond Valid for Certain Time Period

Senator Randleman was recognized to explain the bill and the subcommittee's findings. Senator Bingham moved to adopt the PCS for discussion and the motion carried. The PCS amends the law which provides for the termination of an obligor on an appearance bond by making the termination automatic on the occurrence of specific events as listed in statute. It also releases the surety from a bond after 36 months. Senator Bingham moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

S.B. 285 – Eliminate ILAC Requirement

Senator Davis was recognized to explain the bill and Senator Davis moved to adopt the PCS for discussion. The motion carried. The PCS would remove the requirement that analyses of body fluids of impaired driving defendants be performed by labs accredited by an agency that is a signatory to the International Laboratory Accreditation Cooperation Mutual Agreement for Testing. These analyses involve cases of impaired driving and introduction of evidence related

to alcohol concentration. Joe John, Director of the State Crime Lab, was recognized. He explained that he does not view hospitals as "competition" and that the lab will proceed with receiving necessary certifications. Senator Allran moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 10:56 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

Corrected #1: S676 - 10 Yr. Min for 2nd Gun Felony Conviction has been removed from the agenda. S285 - Eliminate ILAC Requirement and S574 - Appearance Bond Valid for Certain Time Period have been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 2, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 285	Eliminate ILAC Requirement.	Senator J. Davis
SB 443	Abandoned Firearms to State Control.	Senator Brock
SB 574	Appearance Bond Valid For Certain Time Period.	Senator Randleman
SB 634	Increase Penalties/Gas Theft.	Senator Newton

There will be a demonstration of school bus cameras as deterrents to passing stopped school buses.

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 2, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 443	Abandoned Firearms to State Control.	Senator Brock
SB 634	Increase Penalties/Gas Theft.	Senator Newton
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

There will be a demonstration of school bus cameras as deterrents to passing stopped school buses.

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, May 02, 2013

Senator Daniel,
submits the following with recommendations as to passage:

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

SB **285** Eliminate ILAC Requirement.

Draft Number:	S285-PCS75307-RK-36
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **443** Abandoned Firearms to State Control.

Draft Number:	S443-PCS75308-RK-42
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

SB **574** Appearance Bond Valid For Certain Time Period.

Draft Number:	S574-PCS75309-RK-30
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **634** Increase Penalties/Gas Theft.

Draft Number:	S634-PCS85218-RK-29
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

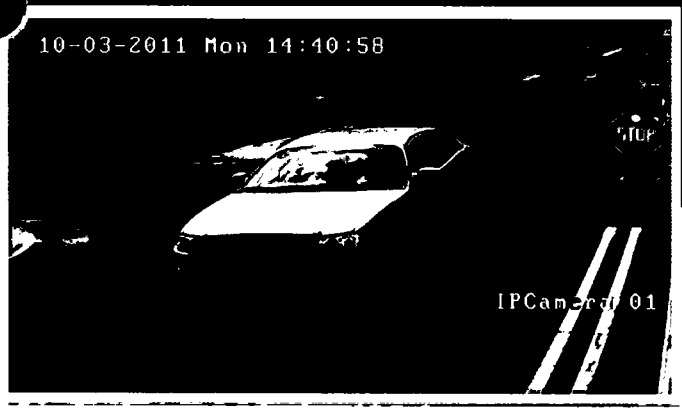
Senator James Davis will handle SB 285
Senator Andrew Brock will handle SB 443
Senator Shirley Randleman will handle SB 574
Senator E.S. Newton will handle SB 634

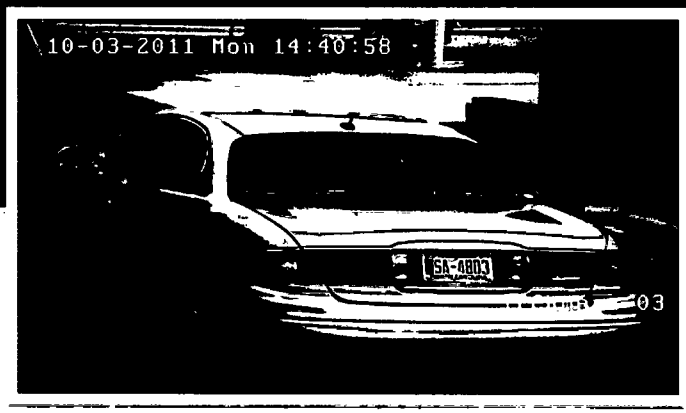
Stop Arm Solution

View up to ***four internal*** and up to ***four external cameras*** with the Fortress Mobile Stop Arm Solution. High resolution digital cameras capture vehicle license plates, vehicle type, driver features and the entire violation.

With ***free Life-Time software updates*** and expanding features Fortress is a leader in pupil transportation surveillance and tracking.

FORTRESS CATCHES EVERY MOVE





Protection - Inside and Out

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Our Stop-Arm Solution shows you...

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- *Identifiable Image of the Driver*
- *Capture License Plate of Vehicle*
- *Distinguish Make, Model & Color of Vehicle*
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RFI

FORTRESS SYSTEMS CONFIDENTIAL INFORMATION

	School Bus Stop Arm Cameras
Response Date:	April 23rd, 2012
Company: **Cage Code:** **FID:**	Fortress Systems International OUTX5 56-1728663
Address:	3801 Rose Lake Dr. Charlotte, NC 28217
Company Phone: **Toll Free:** **Fax:** **Webpage URL:**	(704) 405-5000 1-800-437-3920 (704) 927-6058 http://www.fortressmobile.com http://www.fsiinc.com
Point of Contacts:	Frank Bowden VP, Sales & Marketing 704-405-5000 Ext. 1230 fbowden@fsiinc.com Jack Su CEO 704-405-5000 Ext. 1200 jack@fsiinc.com Maria Jennings Territory Manager 704-405-5000 Ext. 1103 maria@fsiinc.com
Type of Business: **DUNS:**	Small Business 626241673
MBE Certification	Carolinas Minority Supplier Development Council Certification # CA14056

This Stop Arm Camera Solution offering, using Fortress Mobile High-Definition externally mounted cameras, has succeeded in the State of North Carolina where every other solution has failed. This solution records all GPS data and Meta-Data (trigger/sensor activations) to provide the necessary playback of a School Bus stop from the moment the vehicle operator triggers brakes or amber warning lights in the approach, and the sequence of events to finish, after students have fully exited or entered the vehicle with the stop arm no longer activated.

The data, required to enforce law, states that the date, time of day, school bus, violating vehicle type, vehicle color, license plate and the GPS location (coordinates: latitude & longitude) must be recorded. Symbols such as braking, warning "amber" lights and stop arm will appear as they are triggered will be displayed. Lastly, but not required, a picture to identify the age, race and gender of the driver for further help in enforcing the claims. Any installed camera solution needs to demonstrate that this data is collected and that the video is crisp, clear and steady using higher image quality settings that are currently present in most mobile CCTV surveillance solutions.

Fortress Systems will clearly define our proposed "technical" solution with example images, illustrations and software screenshots. We will provide a demonstration on both the hardware and software features, functions and capabilities. Fortress will divulge some trade secrets and mark certain information to be "Confidential". Fortress will also provide a scope of services document, prior work experience and testimony that will demonstrate some implementations with North Carolina School Systems and provide the contact person for each school systems mention.

Fortress Systems is a resident North Carolina based business that has just reached its 20th year in business. FSI is a recognized Minority Business Enterprise (MBE) by the Carolina Minority Supplier Development Council and is currently a registered DBE Certified Business with the NC DOT. Fortress has earned numerous credentials in the Computer & IT Peripheral industry. FSI is a Microsoft Gold Member, Intel Premiere Provider, HP Business Development Partner and Warranty Center, Lenovo Warranty Provider and Lexmark Business Partner. FSI is also a license NC Burglar & Alarm Company by the NC Burglar and Alarm Board.

Stop Arm Violation Data:

Using data supplied by www.ncbussafety.org we will demonstrate what is required to enforce School Bus Stop Arm Laws. Data collected by North Carolina will be used due to the fact that different road types were detailed in annual counts going back to 1998. This data is collected annually from roughly 14,000 school buses and is very extensive. These annual counts provide us statistical analysis.

Understanding the role of the Transportation Department for a School System and the challenges a School Transportation Director face is extremely valuable, critical and necessary for this solution. In most all cases when a driver witnesses a violation, the needed data is not collect fast enough to fill-out and complete a School Bus Violation Report. In most cases, the driver's attention will focus on the safety of the children. Witnessing the violation and getting positive identification on the age, race and gender of the vehicle's operator, in addition to license plate with vehicle make and color is a daunting task.

Before we can look at the technology used to capture these violations, we must first understand the trend of most violations. Using the historical statistics provided by www.ncbussafety.org using the yearly1-day

ations recorded, we can make certain assumptions about violation trends. These trends, if researched ectly, can make available consistent data that will allow vendors to provide a best fit solution.
As a manufacturer / distributor for this proposed solution we made inquiries to understand why this violation is continually taking place. Further we must understand each violation scenario. Data suggest that violations can take place with the driver passing on the left or right of the bus, same or opposite direction of travel and on a 2-lane or 4-lane roadway, and sometimes with a turn lane.

Understanding the percentage of each violation scenario will allow us to keep the cost down, provide optimal operational efficiency and increase the return on investment. Looking at the last three years of data we draw some important conclusions. Please see the chart below!

Year	# of Buses	# Violations	% buses w/Violation	Front Pass	Back Pass	2 lanes	4 lanes	Over 4
2010	13888	2302	16.57%	1678	620	1642	560	81
2009	14150	2416	17.07%	1729	659	1748	577	63
2008	13830	2325	16.81%	1706	598	1711	530	71
Year	Pass Left	Pass Right	AM / PM	Front %	Back %	2 Lane %	4 Lane %	
2010	2215	68	1045 / 1257	72.89%	26.93%	71.32%	24.32%	
2009	2296	89	1025 / 1390	71.56%	27.27%	72.35%	23.88%	
2008	2183	104	1016 / 1309	73.37%	25.72%	73.59%	22.79%	
Frequency	2-Lane Hwy Violations		4-Lane Hwy Violations					
Year	Front	Rear	Front	Rear				
2010	51.98%	19.20%	17.72%	6.54%				
2009	51.77%	19.72%	17.08%	6.51%				
2008	53.99%	18.92%	16.72%	5.86%				

Statistics for 2011 have been published. The results added a different dimension that was not recorded for the previous years. This last detail was recording multiple violations that took place at the same stop location. The date collected above only accounts for a single violation at each stop. If multiple violations were witnessed it was only marked as a single violation.

The 2011 daily counts produced 3680 violations state wide at 2401 stop locations. The 2401 would have been the recorded number if we added 2011 to the above spread sheet. Obviously separating the incident locations (2401) and the new count total (3680…to accommodate multiple violations at a single stop location) added 1279 more violations. That is a 34.75% increase.

For percentage examples we will assume that each violation counted will be one per bus. It is widely known that some buses probably experienced multiple violations. Assuming that each bus recorded either a single violation or none at all, will allow us to calculate a percentage of buses reporting an illegal passing.

most glaring occurrence percentage is that most violations occur with the violation passing a Stop School Bus in the adjacent lane travelling the opposite direction (Front Pass). The other glaring statistic is that most

violations occur on 2-lane roadways. Other statistics that are present are illegal passing with 4 or more lanes o vehicles that pass on the right. These statistics will not be looked in too in this submission since they are less than 4% of the total violations.

To get an understanding of the highest percentage of violations we can divide the percentages of front/back violations with the percentages of 2-lane/4-lane violations. This will display the frequency of violations broken down from front & back 2-Lane Violations and front & back 4-Lane Violations. Slightly more than 50% of violations are from vehicles travelling the opposite direction on a 2-lane hi-way. It could also be assumed that the roads most often travelled and the frequency of stop locations in residential streets will fall under this category.

Violator's passing from the rear heading the same direction on 2-lane roadway is an interesting statistic. This violation type is nearly 20% of the violation total. Further research shows that there is a 2-Lane + turn lane that accounts for about 20% of the 2-lane violations. This statistic is consistent for years 2008-2010.

Four Lane roads or highways present an interesting challenge. Most rural districts will have very few pick-up / drop-off locations on a 4-Lane road. The abundance of 4-Lane violations takes place in Mecklenburg, Wake, Cumberland, Buncombe, Forsyth and Guilford Counties. Last year these counties accounted for 352 of the 560 violations counted on March 17th, 2010. Charlotte Mecklenburg Schools had the highest total with 189 violations.

This data, supplied by www.ncbussafety.org, provides us with some interesting ideas and theories when developing a best fit solution. Designing the optimal solution requires capturing violations on a 2-Lane roadway first. This violation is statistically the highest since most pick-up / drop-off locations are on 2-lane roadways or 2-lane roads with turn lane. This statistic also covers residential roads where a double yellow line may not be present. Roughly 71+% of all violations take place on a 2-lane roadway or residential street. This is also important due to the fact that most 2-lane roads will have children crossing the street, whereas 4-Lane Roadway stops will be manipulated by the Transportation's routing to perform drop-offs where children are not crossing the roads.

From our experience and talking with various Transportation staff throughout the State of North Carolina, routes are designed so children, specifically elementary school students, will not cross the street on 4-lane roads or on a 2-lane road/hi-way where the speed limit is close to 55MPH. Manipulating pick-up and drop-off locations is the best practice approach to assure student safety, however it also adds route travel time thus increasing both idle time and driver time card expense.

Roadway Configurations for Stop Arm Violation Data:

Examining data of a two-lane roadway we can extract some quick data. We know the width of the roadway is 24ft and that violations can occur from the adjacent lane of traffic or passed from vehicles traveling the same direction passing to the left of the driver.

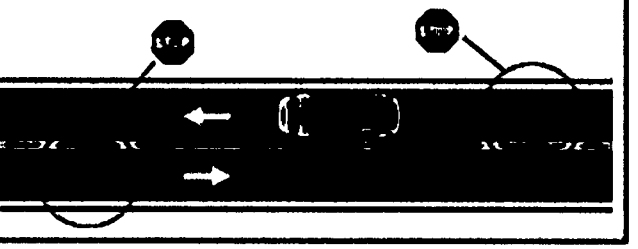
Roughly 80% of 2-lane roadway violations (front or back) happen in the scenario as demonstrated below in Example 1. The remaining 20% of violations occur where a turn lane is present as shown below in example 2 Together these violation scenario(s) account for over 70% of the Stop Arm Violations. These violations are als

nost dangerous to children when they are unloading. Students waiting to be picked-up in the morning are ɜ visible to motorist. Motorist travelling behind the School Bus heading the same direction might not see the students unloading. When motorist decide to pass the school bus from behind, they can really be placing themselves in danger of striking a student.

1

Two-lane roadway:

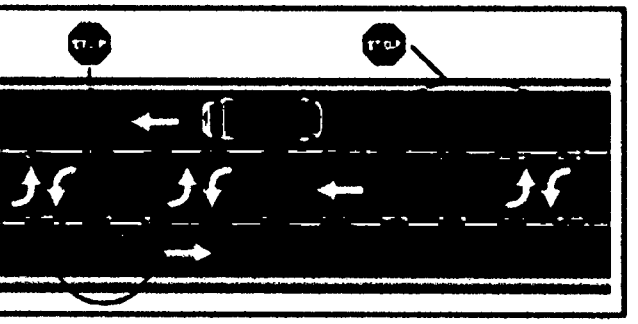
When school bus stops for passengers, all traffic from both directions must stop!



2

Two-lane roadway with a center turning lane:

When school bus stops for passengers, all traffic from both directions must stop!

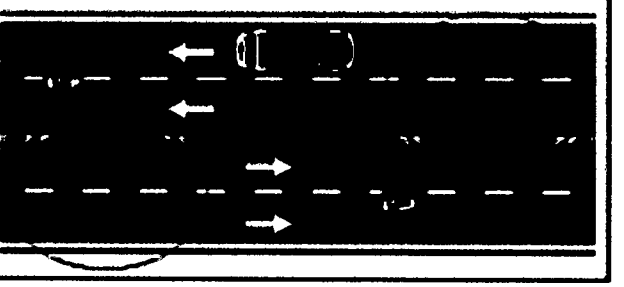


The last piece of the puzzle is the 4-lane roadway. While fewer buses and stops are on these roadways, it is widely assumed that the violation ratio per stop location is higher. These stop locations are not typically present on every bus route and tend to be more common in various school districts with higher population density. Currently, 21% to 24% of the violations take place on 4-lane roadways. If the 4-Lane roadway has a double yellow with no turn lane present the opposite lanes of traffic are required to stop. This is demonstrated in example 3. Passing a stopped school bus from behind is illegal regardless of the roadway configuration.

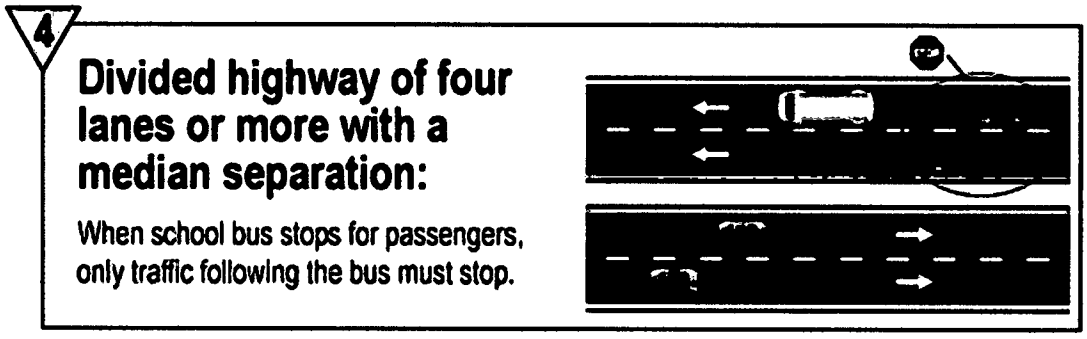
3

Four-lane roadway without a median separation:

When school bus stops for passengers, all traffic from both directions must stop!



The last significant point to make is that both front and back violations on 2-Lane roadways and back violations from 4-Lane roadways will take place on the lane immediately left of the Bus. So the immediate lane just left ıe bus, regardless of the lane being of the same or opposite direction, will statistically account for roughly ı of all violations. This statistic is extremely close using the last 3 years data.



Recreating a Stop Arm Violation:

Fortress Systems Int'l, Inc. asked our client, Fort Mill School District, in Fort Mill, SC to allow us access to a bus to temporarily install some cameras that will capture a Stop Arm Violation. This recreation was performed to provide proof that our identified cameras, technology and solution will capture all the required data that is needed by North Carolina law.

This exercise allowed us get the needed video footage to show proof of concept that our cameras were capturing the necessary data to be used to enforce a School Bus Violation. Once we were awarded the NC State Stop Arm Camera bid, we installed 7 systems in 5 participating School Systems. Wake, Carteret, Stoke, Rowan and Iredell County Schools were the selected counties. Rowan and Wake had 2 buses equipped with the Stop Arm Solution.

Selecting the appropriate camera location and using the optimal lens type for that location is vital to the succes of the system capturing violations.

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A camera mounted forwards at the far back of the vehicle was mounted. This camera was installed at the highest location possible. The camera was positioned to capture video looking down from the back facing forward. This location will capture the Stop Arm, as it is in use, with enough field of view (FOV) to show that a violation took place. Further details will follow in this explanation.

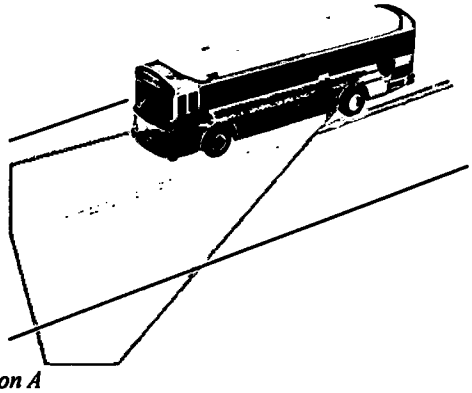

Illustration A

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above camera location allowed a single Camera to capture the deployment of the Stop Arm, the vehicle in adjacent lane of traffic, and ultimately the illegal passing itself. This camera we selected is used to provide an optimal area of focus and field of view. When this video is in full screen mode enough distinguishable features are present to make a distinction on the vehicle in question, and sometime provide driver detail. The closer the vehicle comes to the camera the more details can be viewed, before the vehicle ultimately drives out of view completely. The video will have the date and time watermarked on each camera channel.

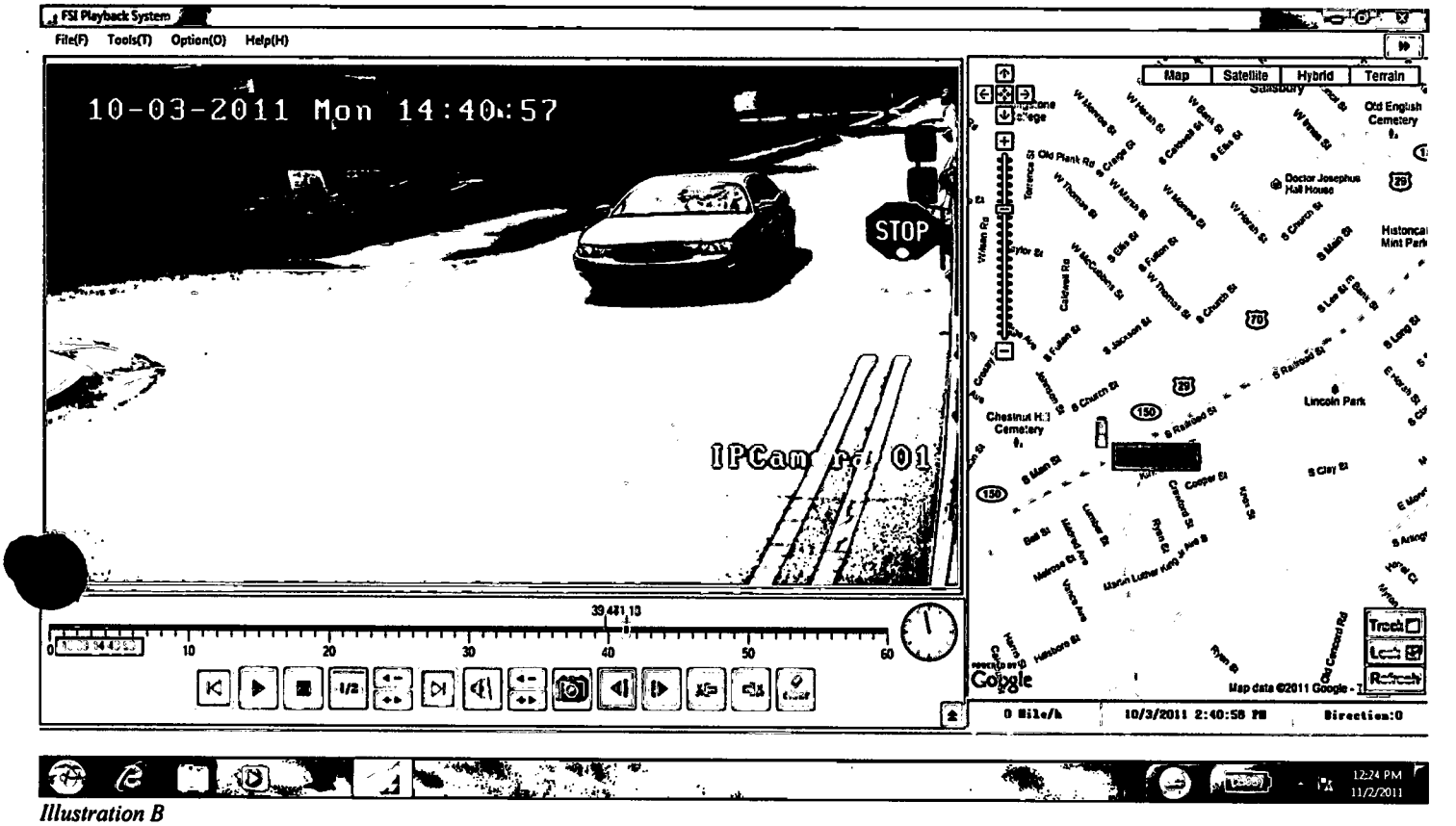

Illustration B

When the vehicle passes out of view from this channel, the camera installed by the stop arm facing the rear will now be able to capture the rear bumper license. Our solution, using these two cameras, will capture the illegal passing with the Stop Arm activated, flashing warning lights, the vehicle driven, license plate and the date and time of the violation. The GPS location and Bus data are still required and will be address and explained in further explanation.

A 2nd camera, mounted by the Stop Arm and facing the rear of the School Bus, will capture the license plate or violations passing from the rear heading the same direction. We also installed this camera in the highest location possible so that the angle of view was at a downward angle. When cameras are face down they can record images with less glare. Recording vehicles with window and metallic paint, there is an abundance of glare issues. If this detailed is overlooked it will significantly reduce the number of detections since the cameras will not clearly capture the license plate.

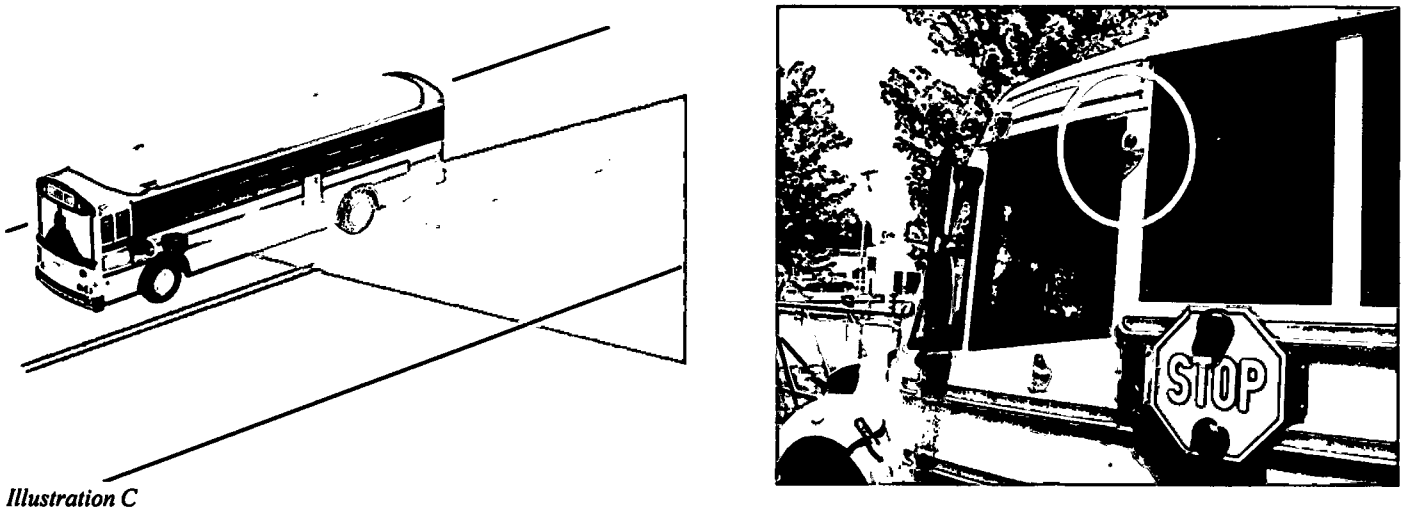

Illustration C

Here we installed a Camera that we angle out in order to capture the license plates, of vehicles overtaking a school bus from a front pass, leaving the illegal passing. Further research after this exercise led us to believe that the preferred lens would be a different than the one used in this exercise. Using the appropriate camera in this location is used to provide the best possible odds at capturing a vehicle's license plate at greater distances with optimal field of view. The software, regardless of camera lens, will allow users to slow down the speed of the video, pause the video, and take a still frame photo to print a picture or save a digital copy of the violation. Below is a picture of a license plate that was captured. This is the same clip vehicle from illustration b..

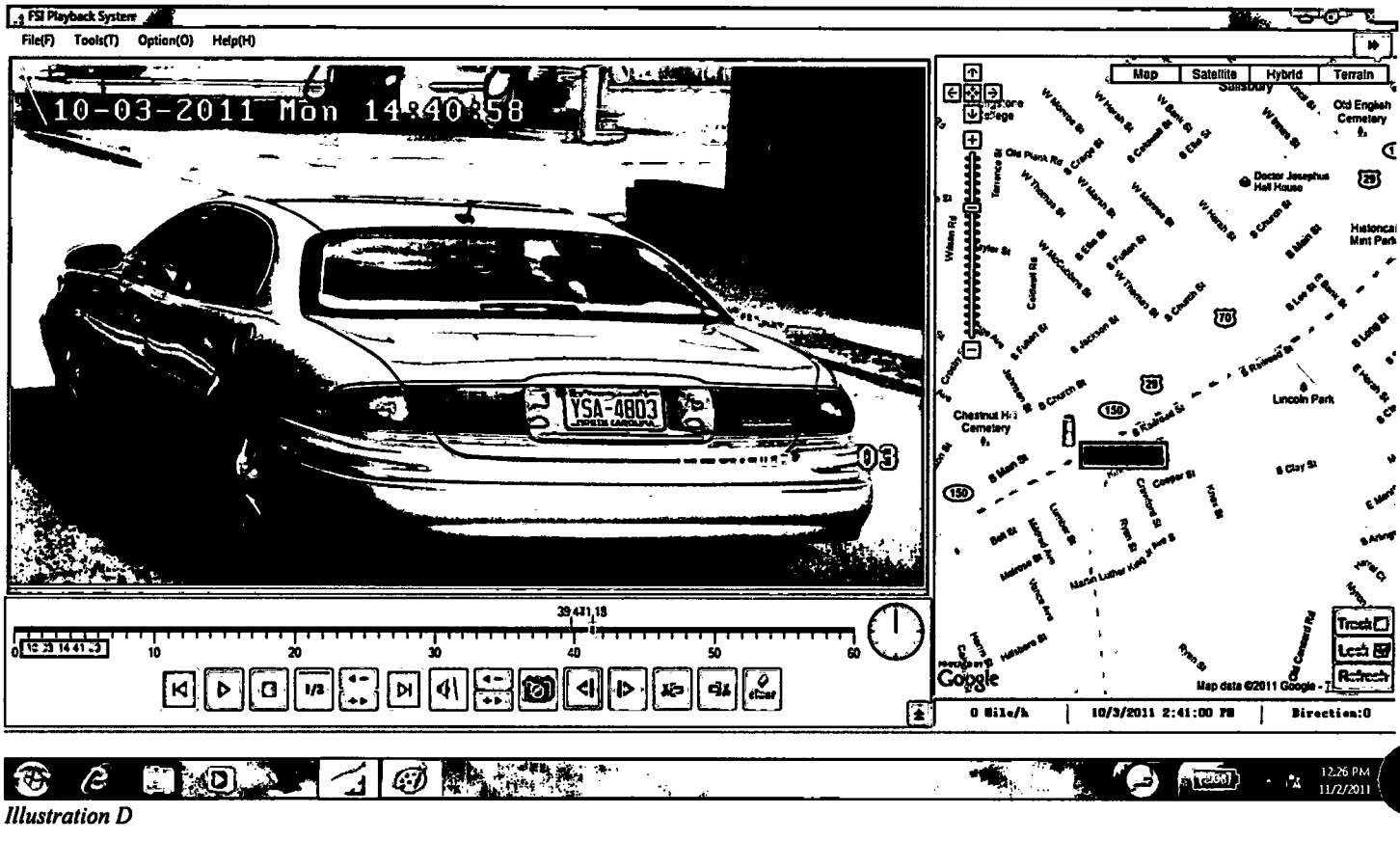

Illustration D

After performing our test, we selected the (front facing) & (back facing) for the optimal Field of View. At varying distances we need to be able to have distinguishable video footage with enough area of coverage. Both cameras need to work simultaneously together to collect all the vital data that is needed. Most violations that take place on 2-lane roadways with roughly 78% taking place on the lane just to the left of the Bus. These cameras will need to be installed in the correct locations to provide necessary video data to prosecute violators. Choosing the needed camera and understanding a cameras Field of View (FOV) is needed. Guess work will provide unfavorable results.

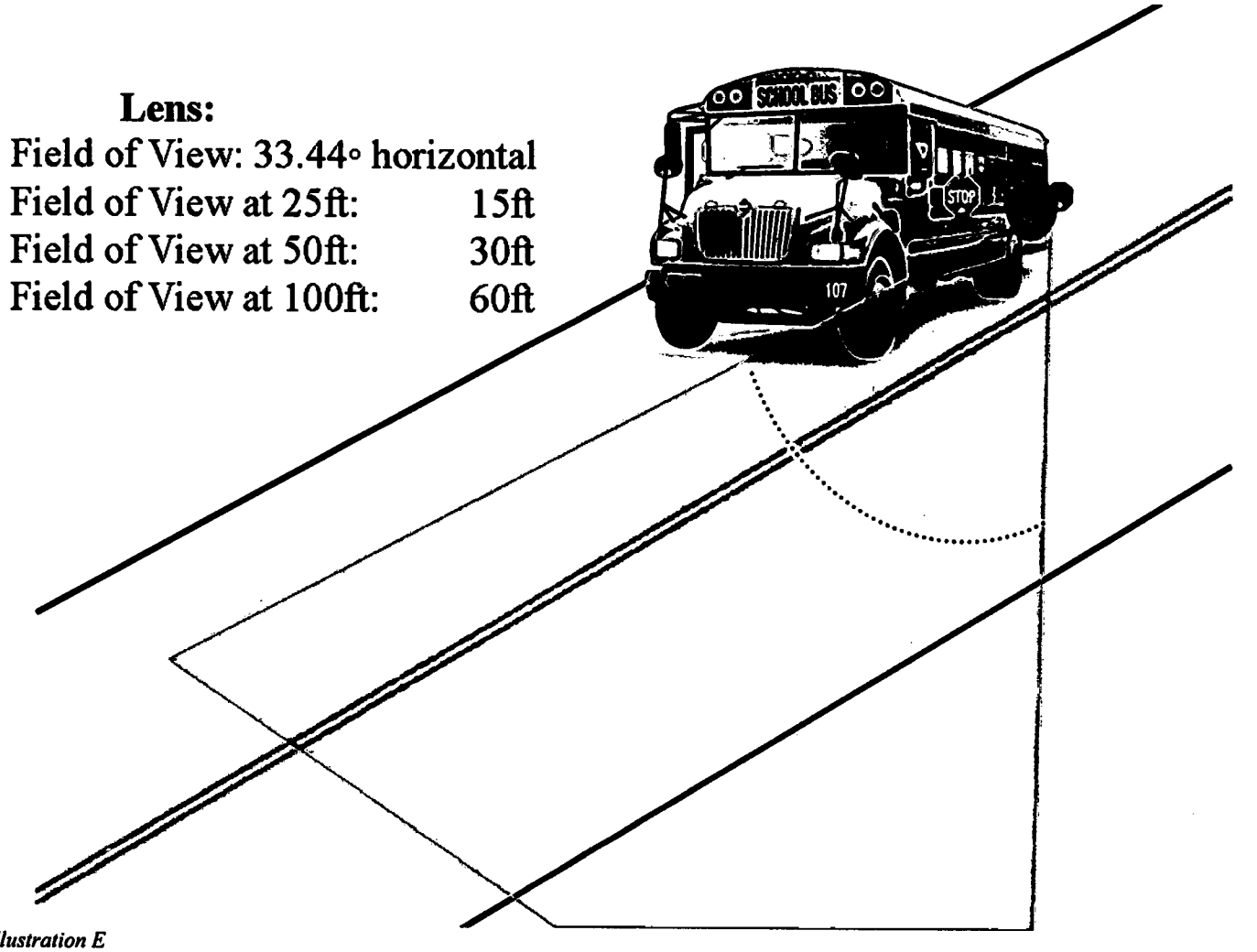

Illustration E

The above illustration demonstrates the FOV coverage on a Camera installed toward the back of the bus to capture the extended stop arm and vehicle violation. When we recreated our Stop Arm Violation, we tested at 18ft due to the bus type. Having 25ft between the Camera and the Stop Arm is the preferred distance. At this distance the camera will have a 15ft FOV where the stop arm resides. This will allow a full view of the ɔsing lane of traffic. This distance can be easily installed on most standard route School Buses. Special d School Buses with different measurements can be accommodated as well.

The Camera installed by the Stop Arm facing back will provide a different FOV to capture video with different criteria of challenges. Fifty percent of violations come from traffic opposing the direction of the School Bus. This cameras primary focus will be to read the license plate, but also be required to record a vehicle and the vehicle's operator if the violation comes from the rear. The other camera will swap recording responsibilities and be used to read the license plate, but will still catch the violation and activated stop arm.

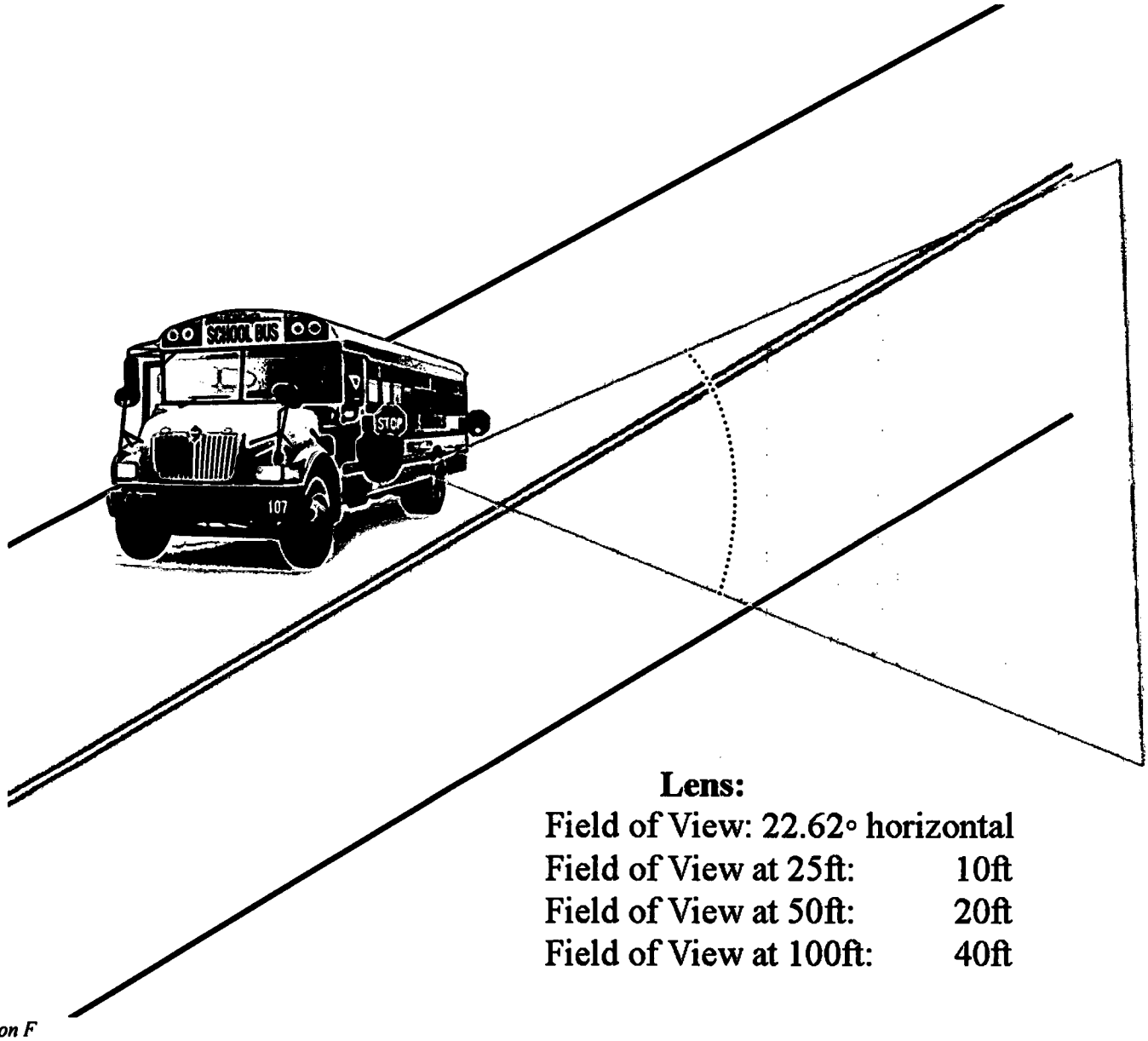

Illustration F

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Hardware Required to capture a Stop Arm Violation:

The information starting midway on Page 6 and following is provided by Fortress Systems Int'l, Inc and is a trade secret and will be labeled "Confidential". This intellectual property of FSI shall not be made public or shared with any third party person outside of the WSFCS personnel.

Through a series of test, experiments and some evaluation installs, current CCTV technology can NOT provide the required video consistently to be effective. The resolution, image quality and clarity lack favorable results and is not providing enough substantial evidence. This evidence needs to be admissible evidence that is consistent with the Rules of Evidence required by the State. Conditions need to be perfect for this technology to work and that is rarely the case.

Currently, all mobile CCTV cameras are recording at 420TVL to 520TVL with resolutions set at 720x480 or 720x240 using the NTSC recording standard. Any vendor putting this technology in place will have undesirable results that will not be favorable evidence to support a violation claim.

After further testing followed by frustrating results we decided to invest time looking at other options. What we ultimately decided on was to shift gears and work to develop a new system unlike any other solution on the market. Keeping in mind where the industry is, and the current technology in place, client commitments with other vendor's products and the go to market cost and strategy we choose to develop a "hybrid" Mobile DVR.

Fortress Mobile "Hybrid" DVR offers both Analog and IP Video recording. The IP Channels will be used he Stop Arm Cameras, thus allowing better resolution and clearer video recordings thus providing admissible evidence. The Analog channels will be used for cameras in the vehicle. This was done purposely so that Schools can upgrade their current systems and keep their residing cameras in place, thus controlling some cost obstacles and only requiring a single MDVR for each school bus.

The Fortress Mobile "Hybrid" DVR will offer up to 2 or 4 IP Camera Channels. Most buses would be fine with 3 IP Cameras. Routes that have stops on 4-lane roadways could benefit with a 4th exterior IP Camera. Below are some quick specifications on our Mobile DVR.

Video Compress:	H.264
Analog Video/Audio Inputs:	4 or 8 Channels
IP Video / Audio Inputs:	2 or 4 Channels
Audio Compression:	OggVorbis
Preview Resolution:	704x576 (PAL), 704x480 (NTSC)
Recording Resolution:	UXGA / 720p / 4CIF / DCIF / 2CIF / CIF / QCIF
Frame Rate:	PAL: 25fps, NTSC: 30fps
Video Bit Rate:	32Kbps~2048Kbps, or user-defined (Max. 6144Kbps)
Synchronous Playback	4-Chl, 8-Chl, 12-Chl
Dual Streams:	Yes
eless:	3G & Wi-Fi
Capacity	Up to 2TB

Power Supply:	6-36V DC, 10A, 50~60Hz
Consumption:	≤60W
Working Temperature:	14° F ~ 131° F
Dimensions:	(D) 11.81" x (W) 7.87" x (H) 5.9"
Weight:	13.2lbs

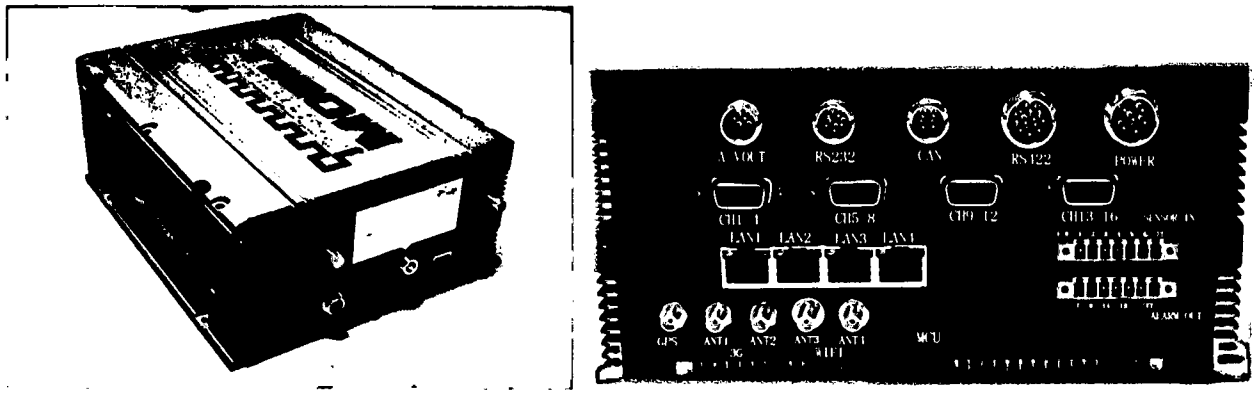

Illustration F "Trademark"

As stated, current CCTV Analog style cameras already in place in the School Bus interior can be used and attached to the analog channels. The IP Cameras will attach to the Lan Ports on this Mobile DVR. The illustration above demonstrates that this box will support 4 IP Cameras.

The IP Camera used in the Fortress Mobile solution is made to withstand the rigorous environment of a School Bus. With its location residing on the vehicle exterior it is designed to operate in outdoor environments. All cameras have been weather tested. The last detail with our identified camera is to make it School Bus yellow.

Image Sensor:	1/3" Progressive Scan CMOS
Effective Pixels:	1.3M
Lens:	4MM, 6MM, 8MM, 12MM & 16MM
Min Illumination	Color: 0.5 Lux; B/W: 0.1 Lux
Electronic Shutter	1/25 ~ 1/100,000
Video Bit Rate	32 Kbps ~ 16Mbps,
Video Compression	H.264/M-Jpeg
Max Resolution	1600 x 1200 * Actual recording resolutions: (1280 x 720)
Frame Rate	15fps & 30fps
Power Supply	12V
Power Consumption	3W Max
Working Temp	-10c ~ 60c
Working Humidity	90% or less
Camera Casing	Weather-proof & Vandal-Proof Design / IP66

Properly identifying the needed hardware is half the solution. Extracting the video, images, GPS data and recorded sensor triggers through the software's graphical user interface (GUI) is the other half of the solution. A successful implementation hinges on the assumption that novice users can easily retrieve, locate, view, save and share video footage on any potential stop arm violation. Violations caught by the cameras will also need to demonstrate that the date, time, vehicle number and street location are recorded and display that the Bus rator executed a procedurally correct stop at the pick-up / drop-off location. The software must be able to act data, images or other details that is consistent with the State of Maryland's "Rules of Evidence", and be admissible as evidence on any violation detected and recorded.

The following series of screen shots show a single stop location with 3 vehicles shown to overtake and pass a stopped school bus. All images, screen shots and illustrations are taken without any alterations. This video clip was provide to Fortress Systems from one of the 5 participating counties shortly after this single incident resulting with 3 violations was captured. These violations were captured on October 27th, less than 30 days after the system was installed, and all three violations are being contested. The court date was set for Thursday, January 5th, 2012 then a continuance was set for February 2nd.

These screenshots, and images, have been submitted in the court to demonstrate the violation. Below are details explaining how our software with attached Stop Arm cameras will detect, record and extract the needed data to submit admissible evidence of a violation.

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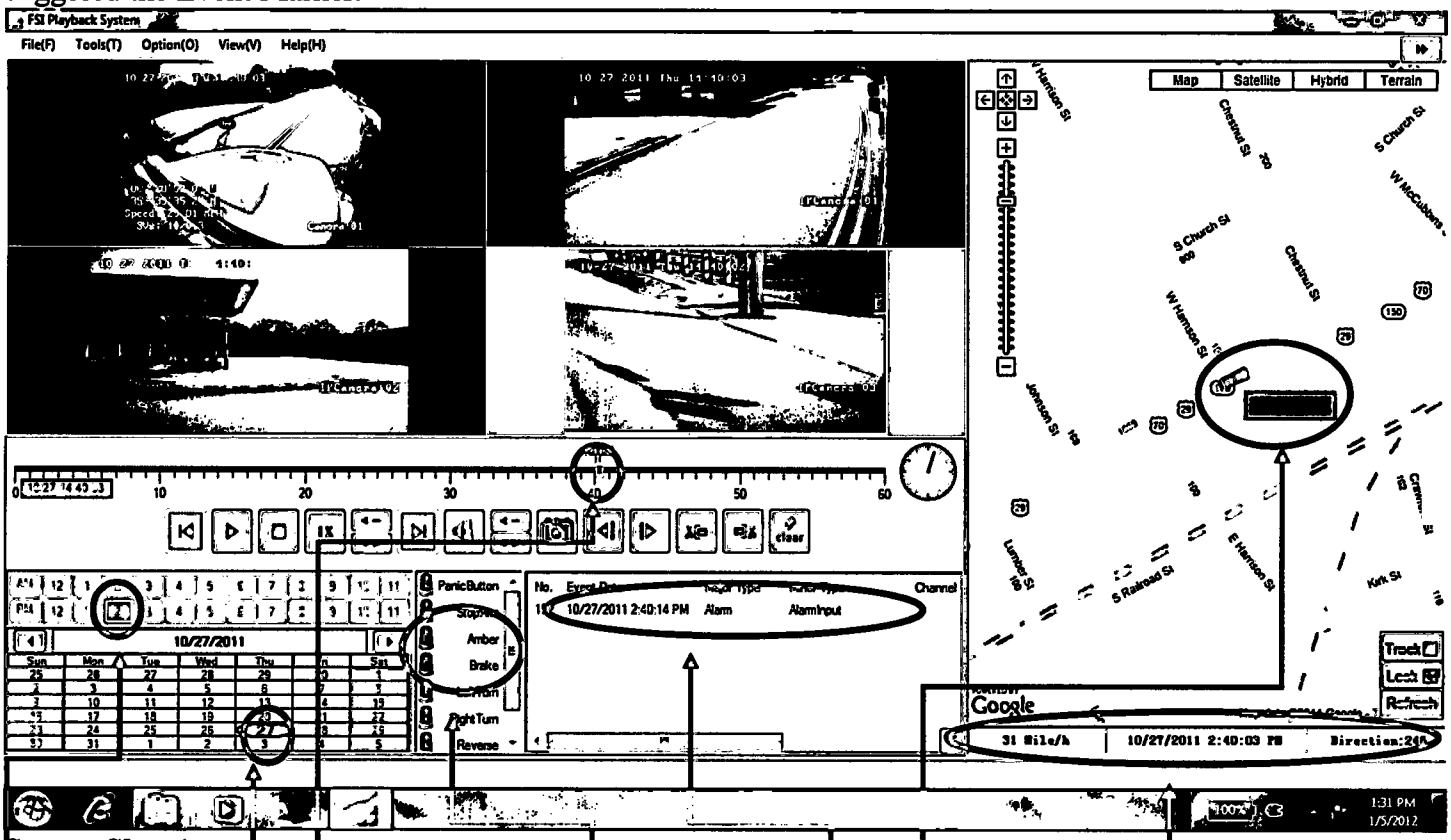
Software & Steps for Viewing a Stop Arm Violation:

The Fortress Mobile Video Playback Viewing Software will allow users the ability to easily locate, retrieve, view, save and share video data of importance. All video is recorded with the data and time stamped. All cameras will show simultaneous video footage that is synchronized. The GPS Window will provide School Bus location with speed and direction of travel. The triggers (sensors) are located to the right of the calendar search and will be lit-up as they are put in to use. Lastly, an alarm record window will display any time a driver has triggered the Event Marker.



Screen Shot 1.

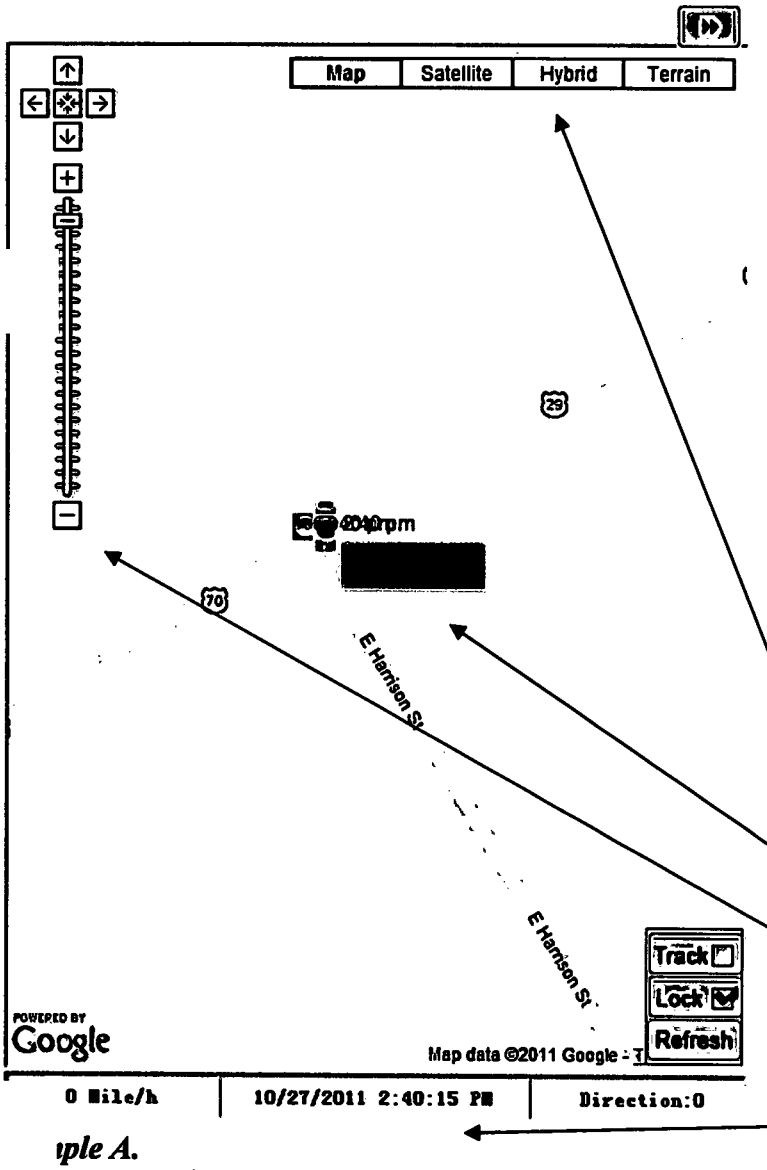
Hour | **Minute Counter** | **Sensors/Triggers in Use** | **Vehicle Location**

Date / Calendar | **Alarm Entry / Event Marker** | **Speed/Time/Direction**

There are a lot of variables to capturing a Stop Arm violation. The first and most obvious is the video. If the video is not capturing the required data, then the solution is not worth exploring regardless of the ease-of-use or other integrated technologies. Video must, by itself alone, show proof that a violation has taken place. This must show the Bus, completely stopped, with Stop Arm in use and a vehicle overtaking and passing the School Bus. Date and time must be watermarked on the video to show proof when the violation occurred. Other camera(s) should be used to capture further details about the vehicle passing the bus.

Other cameras can be used to capture the License Tag. Depending on the State the tag may be located on rear bumper only. The solution should be able to capture this data in varying times with different lighting conditions. Glare, shadows and reflections caused by the sun will alter the images being captured. The cameras must accommodate the changing conditions from one moment to the next. A simple turn of the wheel will change the field of focus of the camera altering areas capturing sunlight reflection, direct glare and the shadows in between.

After the cameras are installed the solution should also have a GPS receiver. This device will capture the latitude and longitude with each frame of video. Users will see the location of the vehicle with speed and direction of travel just by collecting these two data points. Speed collected by GPS will have latency in display recorded speed to actual speed. This is noticeable when a vehicle is accelerating from a stopped position or when the vehicle is declining in speed coming to a known stop location.



iple A.

The Map Window will display the vehicles location with digital notification on speed, direction of travel, date and time. This data is shown simultaneously with the video data and all channels are synchronized.

Users can select the "Track" button to a digital crumb trail where the vehicle has gone or to track the route up to the time of viewing. Any time the Stop Arm or Panic Button is pressed, a icon will appear on the map displaying the use of that trigger.

The Google Map interface also allows users to change the look and feel of the map. The vehicle's identification number will reside next to the vehicle as well for bus verification purposes.

Change look & feel

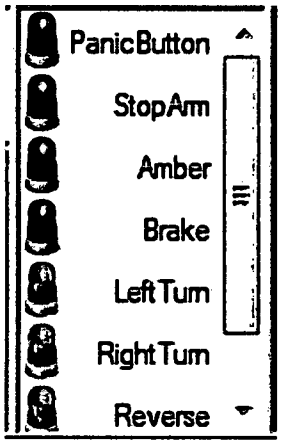
Bus Location

Map Zoom-in & Zoom-out

Track

Speed, Date/Time, Direction

Lastly, the solution should be able to display when a driver is using turn signals, applying brakes and has activated the warning lights (ambers) prior to a Stop and then the Stop Arm activation itself. This collection of Meta Data, commonly known as triggers or sensors, provides operations to view how drivers operate a vehicle. This data will allow users to see if the driver applied the warning lights with enough advanced notice for motorist to realize that the bus will be making a stop shortly.



Sample B.

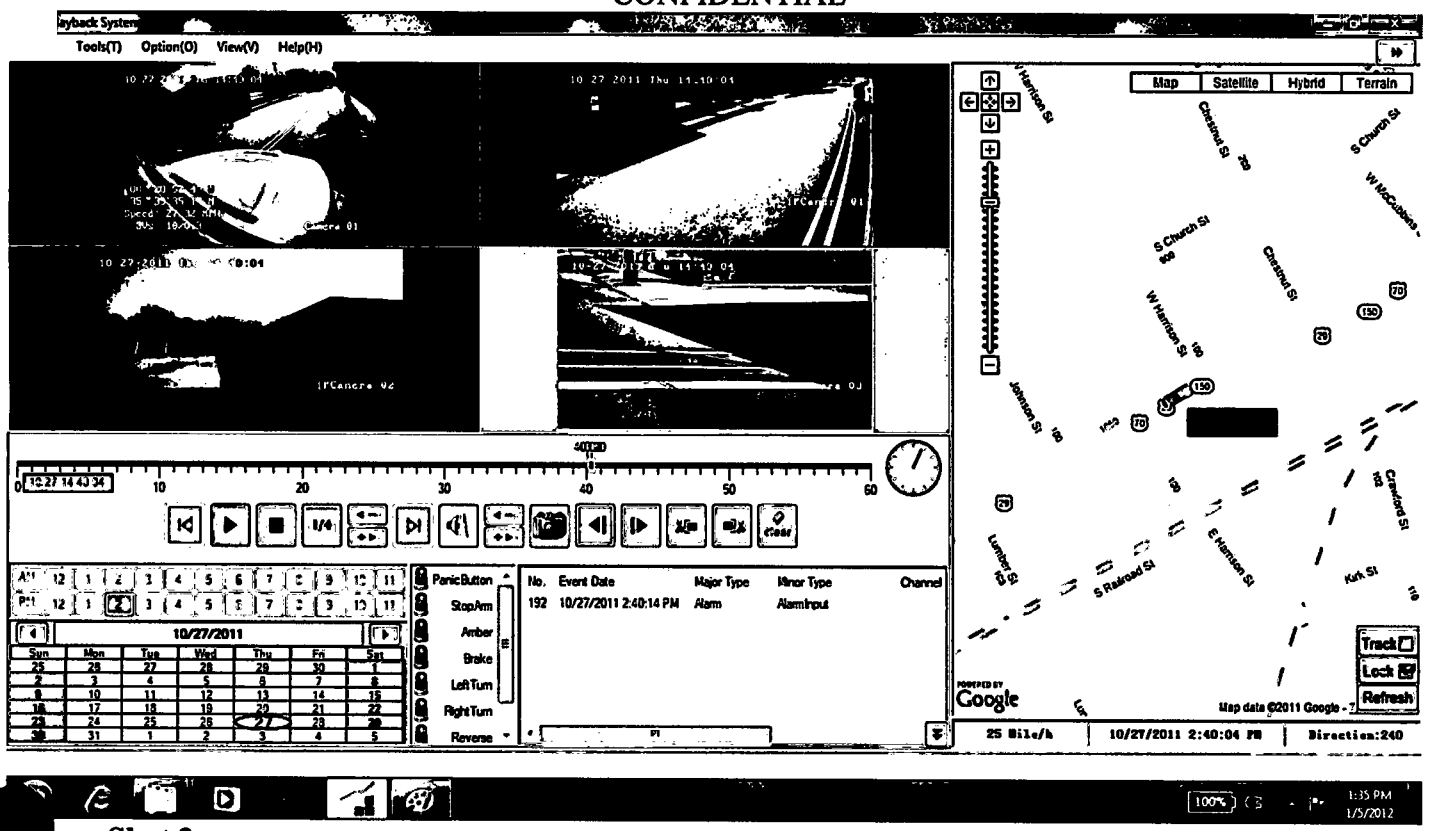
Commonly attached Meta Data (Sensors / Triggers) include: Event Marker, Stop Arm, Brakes, Amber Lights, Turn Signals (left & right) and the Door. The Sensor window to the right shows that the Stop Arm, Amber lights and brake are all in use. These 3 sensors all being on at the same time, informs us that a stop is taking place. This sensor shot window coincides with the map on the previous page.

Also in use is the Event Marker or Panic Button. The driver witnessed a violation at this stopped and followed instruction by pressing this event marker, thus allowing his supervisor to easily locate this recorded incident. Watching the video with the sensors activated, users will have an informative playback of a driver approaching, overtaking and passing the School Bus while loading/unloading children. More screen shots will be used to show a detected violation.

Continuing with a series of screen shots and resuming from "Screen Shot 1" we will display what is captured b four (4) strategically placed cameras. To demonstrate the violation we will place emphasis on the time of each screen shot, images captured, location of the school bus and location of the violating motorist(s) caught by the cameras and what sensors were activated at those moments.

A total of fourteen (14) screen shots will follow providing explanation for viewing a known violation, and what processes were used in retrieving the data. These samples will demonstrate a School Bus, approaching a stop location, with intent to discharge students and three (3) vehicles that clearly performed an illegal pass. A total of seven cameras were installed on this bus. Three cameras were installed on the vehicle exterior recording at a resolution of 1280x720. Four cameras were installed in the vehicle interior with one mounted peering out the front the windshield to capture video images in front of the vehicle. The other cameras were put in strategic places to accommodate student discipline demands.

The three external cameras and the front windshield camera provide a significant amount of data. The camera placements were determined to provide the best field of view. The lens associated with each camera placement optimizes the field of view. Understanding what is required by law and by schools allows our solution to fully cover the bus inside and out.



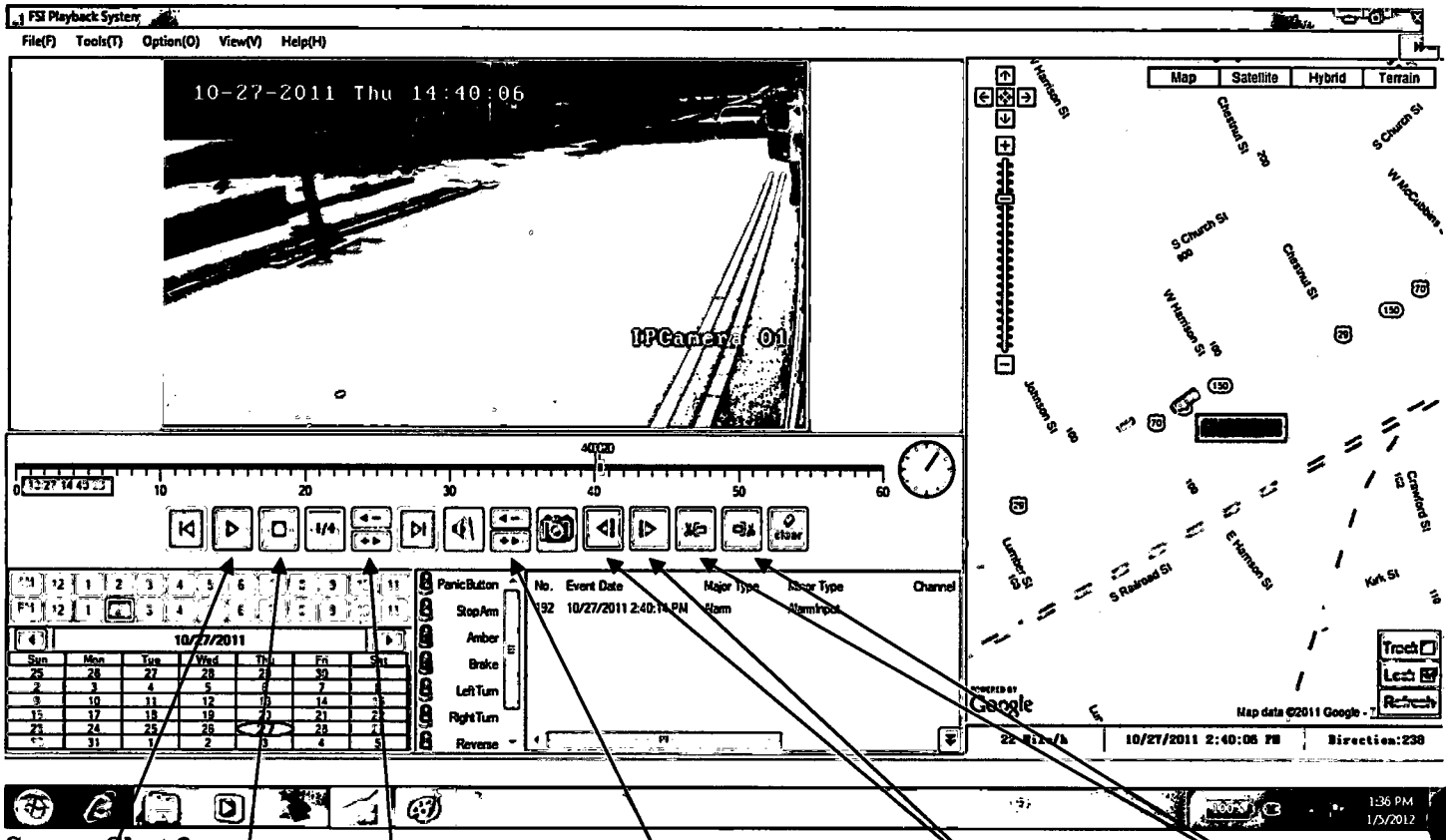
een Shot 2.

Continuing with a series of screen shots and resuming from "Screen Shot 1" we will display what is captured by four (4) strategically placed cameras. To demonstrate the violation we will place emphasis on the time of each screen shot, images captured, location of the school bus and location of the violating motorist(s) caught by the cameras and what sensors were activated at those moments.

In Screen shot 2, the current time is 2:40:04pm (to the second). All times will show the second(s) recordings. At this time the vehicle is heading west on Route 29 at a speed of 25MPH. The brakes and amber lights have just come on demonstrating that the vehicle is approaching a known stop location. Given the fact that the time is 2:40pm, we can assume it is a drop-off.

Below is a screen shot of our software at 2:40:06PM. Here the user "double clicked" the 2nd camera channel residing in the top right hand channel of the video from Screen Shot 4. When users "double click" a camera screen (or channel) that screen will be viewed in full screen mode illuminating the other channels from being viewed simultaneously. This feature allows users to focus their viewing to a specified channel.

In screen shot 3, notice that 2 seconds have gone by sense the previous screen shot. The vehicle that was barely noticed in the top-right camera channel is clearly visible. The School Bus speed has decreased to 22MPH and the Amber light sensor and brake sensor are still shown to be on. Also this screen shot will demonstrate the date, time and camera channel watermark that is present on each channel.



Screen Shot 3.

PLAY/PAUSE — STOP — INCREASE/ DECREASE SPEED — INCREASE/ DECREASE AUDIO — FRAME BACK FRAME FORWARD — START/STOP VIDEO CLIP

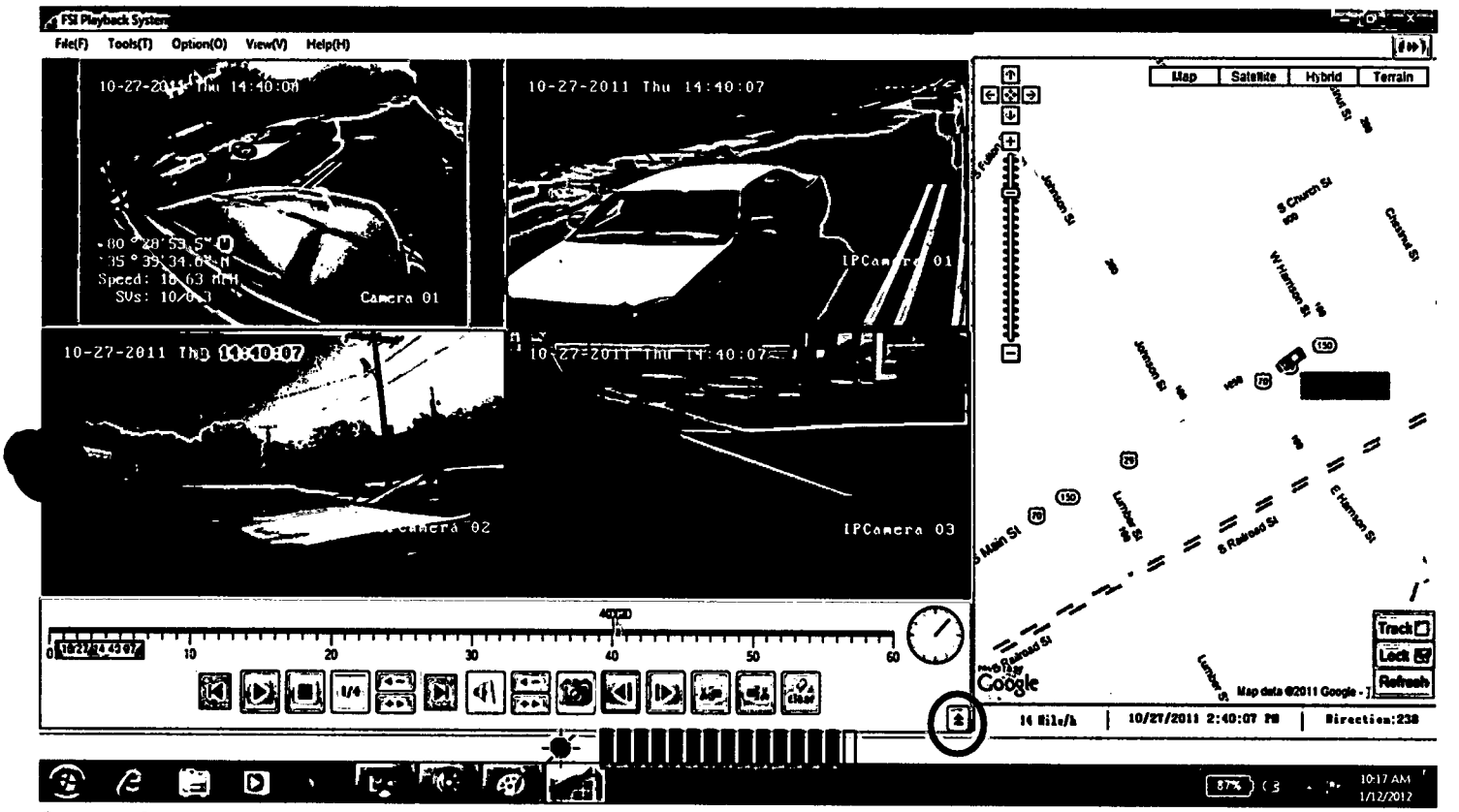
Highlighted above are the system controls that might be used when viewing a violation. The Play / Pause button allow users to pause then resume play. Obviously when play symbol is present we have paused the video as shown above. When the play button is pressed the "Pause Button" is visible.

To the right of the play/pause button is the "Stop Button". User can hit this when they want to exit the viewing to close the program. To the right of the stop button is the video viewing speed. Watching video at normal speed will be indicated by "1X". Above we see that the user is watching video at ¼ rate of the standard viewing speed. By reducing the viewing rate we can slow down the video to see a frame by frame view of the violation. This is very important when explaining a violation and the approach of a bus to the stop location.

Next to the - / + icon control is the "Camera" button. This will take a snapshot of the camera. The selected camera is the one with the Green background. Even when multiple cameras are being viewed on camera will have the green background. This is also the camera channel where audio is being heard from. Outdoor cameras will not have the microphone option.

Moving along there are two icons that are similar to the play button. These buttons allow users to move back and forth from image to image. In order to do this, Users must "Pause" the video, by hitting the pause button, then use the frame forward / back button to isolate the best image. This is a very useful tool for capturing and

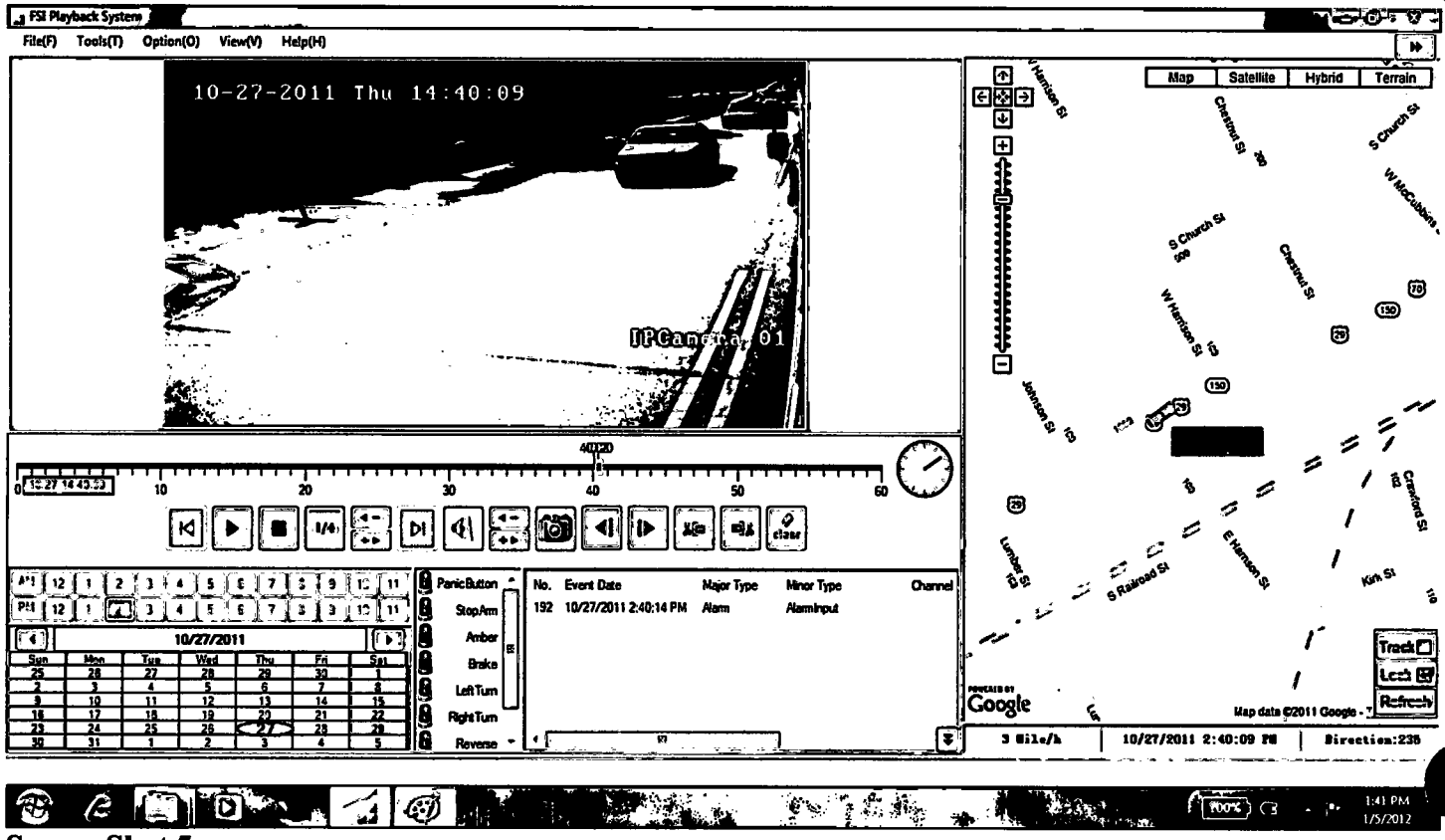
saving the best License Plate shot when a violation is captured. Lastly, start / end clip buttons are available. This allows users to take a sample video clipping so that it may be saved, archive or shared using any type of storage. It would be advisable to save and archive all violations for future demands. This data could also be needed for law enforcement and for the prosecution of violators. Standard files will keep the embedded encryption unless they are check to be converted to an AVI file format. This means that the Fortress Mobile Video Viewing Software must be used to retrieve and view the video file. The sequence of screenshots we are viewing is from a saved video clip.



Screen Shot 4.

The above screen shot was taken at 2:40:07, a second after screen shot 3. The car that was clearly in view from the previous screen shot is now passing the school bus. The School bus has not yet stopped or activated the Stop Arm so there is obviously no violation. We can also see that the Bus speed is now 14MPH, 6mph less than the previous screen shot.

For illustration purposes we expanded the camera view screens by hitting the "Double Arrow" located under the bottom right hand video window. These arrows will allow users to hide the Calendar Search, Sensor & Alarm Windows to expand the camera channels. As this feature is used the arrows will point in the opposite direction allowing users access to the hidden windows. A second double arrow resides over the top right ıer of the Map Window. This will allow users to hide the map and expand the video channels in to full en mode.



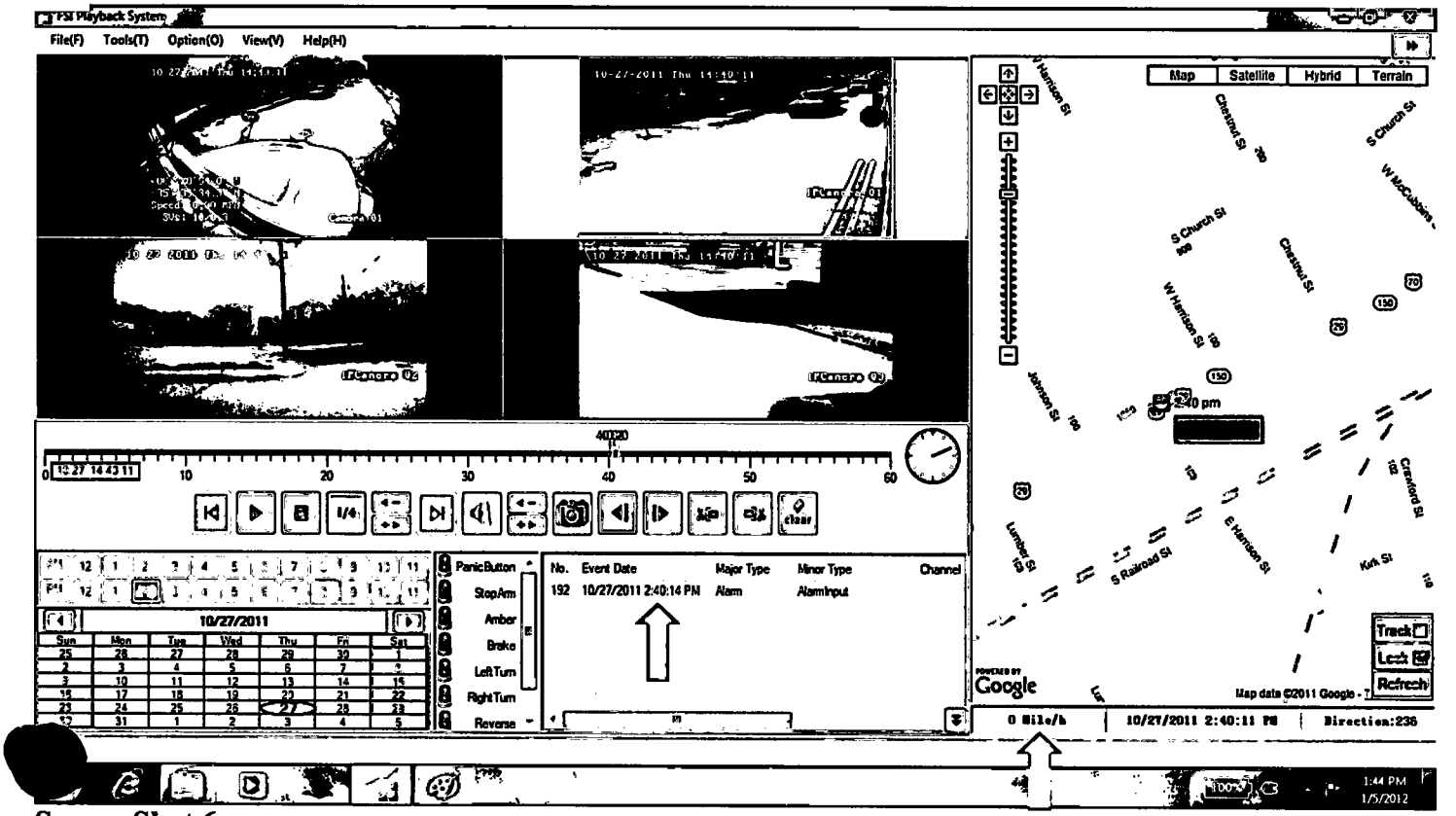
Screen Shot 5.

Continuing with this series of Screen Shots we are now looking at a single camera view from 2:40pm (09 seconds), 2 seconds after the previous shot. The bus speed is now down to 3MPH (11mph less). The amber lights and brakes are still applied. The bus's location has altered since the first screen shot demonstrating how much distance it has travelled while approaching the stop location. Users may use the Google controls to zoom-in, or zoom-out, to define a street location.

Screen Shots 1 thru 5 have shown a School Bus approaching a stop location. The sequence starting with Screen shot 1 had the bus travelling at 31MPH precisely at 2:40(03 seconds). Screen shot 5, six (6) seconds later, has the School Bus at 3MPH. Each screen shot that showed the Sensor Window clearly demonstrated that the "amber lights" and "brakes" were being applied.

The following screen shots will demonstrate what is captured when a violation takes place. These shots will demonstrate what the cameras capture and why they were placed at those locations.

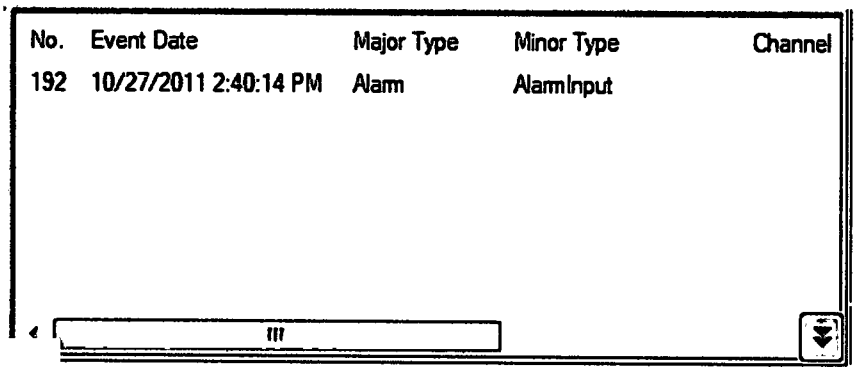
Screen Shot 6 below now shows that the school bus has come to a complete stop. The stop arm is in use with the sensor lit up in the sensor window. The camera in the top right also shows the actual stop arm applied. Vehicles coming from the opposite direction are also shown in the captured video screen. The speed of the school bus is now 0MPH, and the map now has a watermark showing that the stop arm is applied. Any time the Stop Arm is activated it will leave a watermark with time on the map screen. This feature allows users to see multiple stop locations, with the time for each stop, while they are reviewing video.



Screen Shot 6.

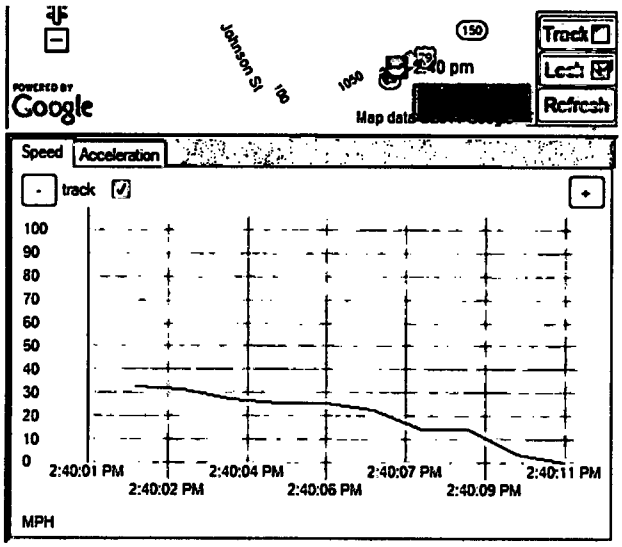
The window in the bottom right shows that a vehicle is coming in to view. This camera is placed to capture license tags from opposite direction passes. This vehicle passed the bus just prior to the driver activating the stop arm, so no violation was recorded.

In a few moments we will observe a violation. The bus driver has triggered the "Event Marker" which is also referred to as a panic button, marked using the **Green Arrow**. Any time that marker is pressed it will appear in this box. The users will have to be watching a certain date, and the alarms for that date will appear in that window of our software. Below is a blown up view of that window.



ple C.

Located below the map is a **Red Arrow** pointed to the digital speed display. If users double click the speed a speed chart will appear. This chart will plot the vehicle speed in an acceleration chart.



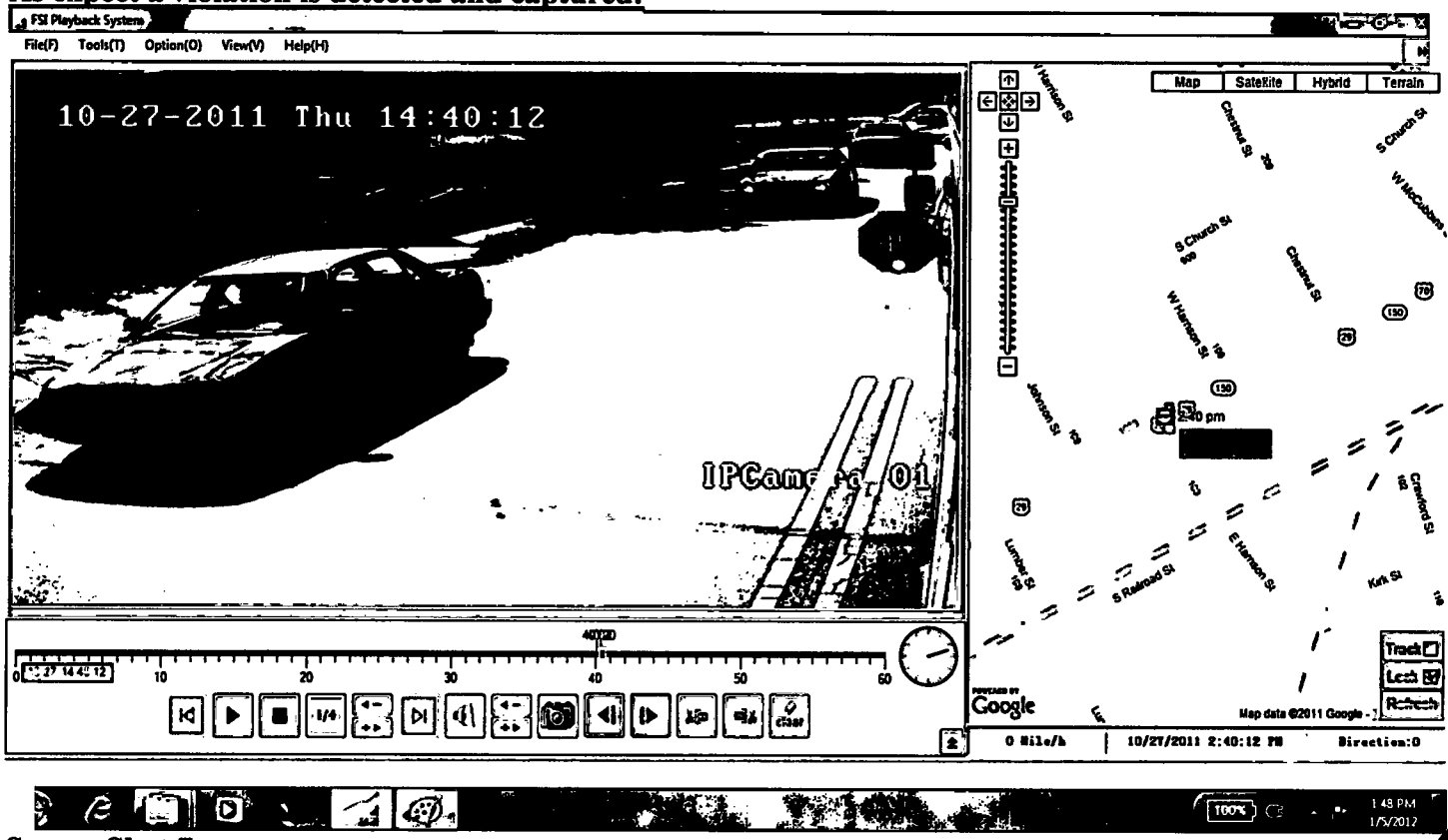
Sample D.

The y-axis will show the speed range and the x-axis will show time. User can expand the time range by hitting the [-] or [+] command in the top corners of the Speed Window.

As demonstrated we can see the gradual speed decline over time. This speed graph allows users to view that a starting speed of travel was 31MPH. Nine to ten seconds later the bus was completely stopped. Every accounted second within that time period shows the exact speed of the vehicle.

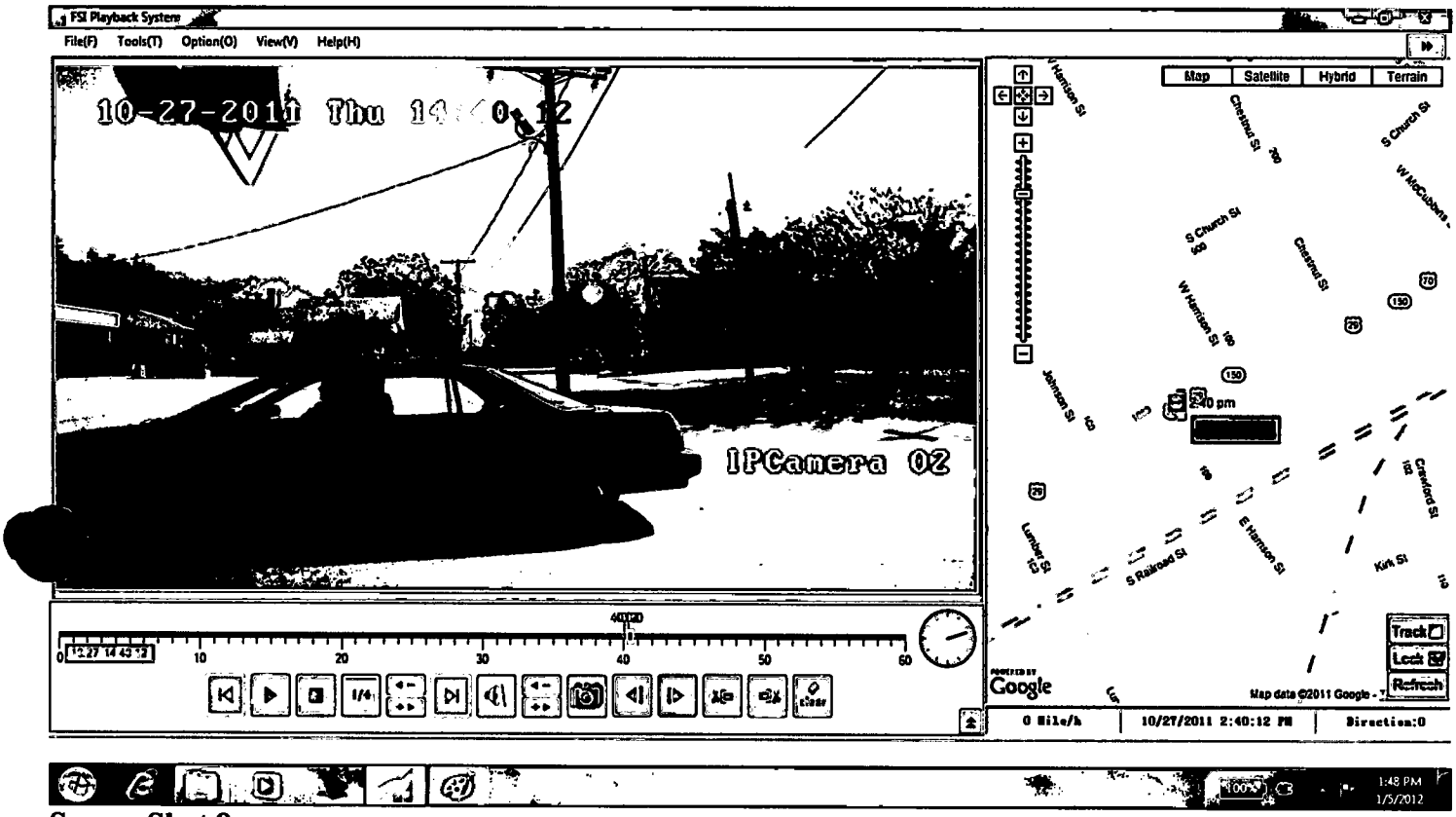
Remember: there is latency between actual speed and speed collected by GPS.

<u>As expect a violation is detected and captured!</u>



Screen Shot 7.

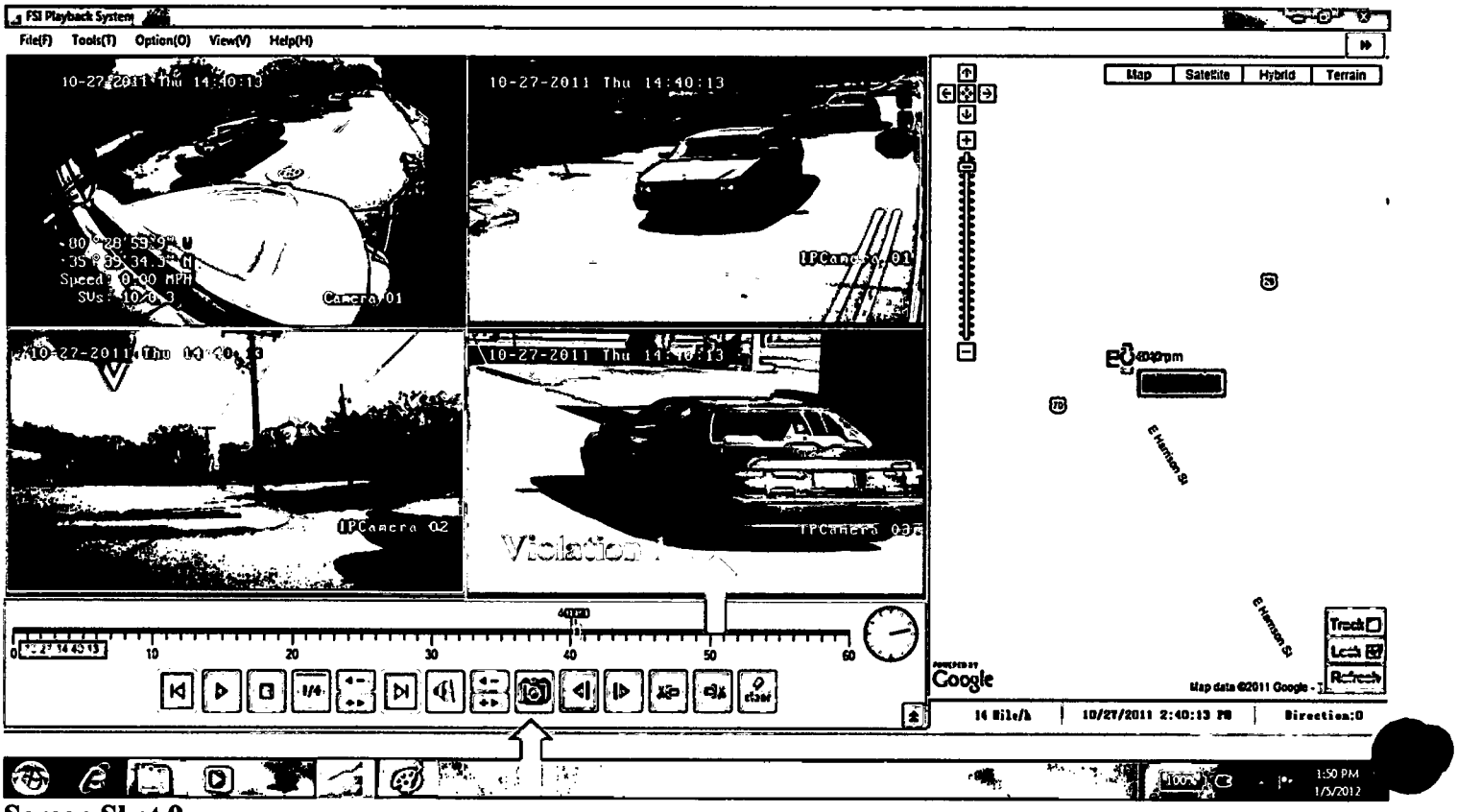
The screen shot on the previous page shows a vehicle overtaking the school bus with the school bus stop and the stop arm extended. The user expanded the view by using the double arrows to hide the calendar & alarm windows. The users also double clicked the camera channel to view that channel in full screen mode. That camera channel and map show a violation, with the school bus location, speed of the school bus, stop arm activation, the date with time and camera channel.



Screen Shot 8.

Moments later, still on the same second, we can observe video from the second exterior camera. This camera is used to get a driver's profile. Some states stress more importance on this feature, but regardless this will usually give clear indication on the driver's age, race and gender. In the first round of installments in NC, we have captured a good percentage of violations where the registered owner was not the driver.

This camera was also positioned so that the Stop Arm is barely in view. Having this camera positioned just below the stop arm allows a clear cut image view that a driver has overtaken a stopped school bus.



Screen Shot 9.

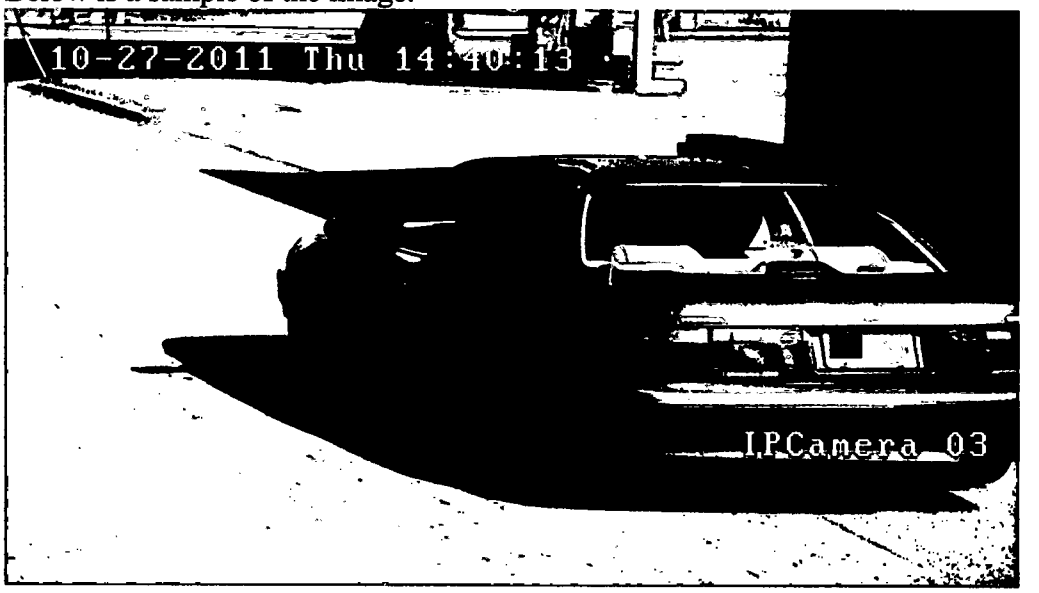
Obviously, there is a lot going on in this screen shot. The 1st vehicle to commit a violation is in the bottom right camera shot. The 2nd vehicle to commit a violation can be viewed from the other 3 installed cameras. The top left is the windshield camera; top right is Stop Arm Camera 1; bottom left is Stop Arm Camera 2.

Pages 6 thru 10 explain the two (2) primary cameras, one to capture the violation and the second to capture the license plate on the rear bumper. Obviously this is assuming that the violation is coming from the opposite direction. The cameras will also capture the need data when a pass is from behind going the same direction. Camera 1, the internal windshield camera was installed with intent to watch children as they cross in front of the bus. This is a standard option on all of our standard School Bus Video Surveillance offerings. This camera, and the video it captures, can be extremely powerful when children are in view and there is a violation.

IP camera 2 in the bottom left is using a wide angle camera for recording. This camera along with IP Camera 1 will capture the any violation from two different vantage points. Both cameras are recording at a resolution of 1280x720. This increased resolution will provide further details that are not available from other offerings. This data, and the increased details, is needed to distinguish further details on the driver, vehicle and ultimately with the last camera the license plate.

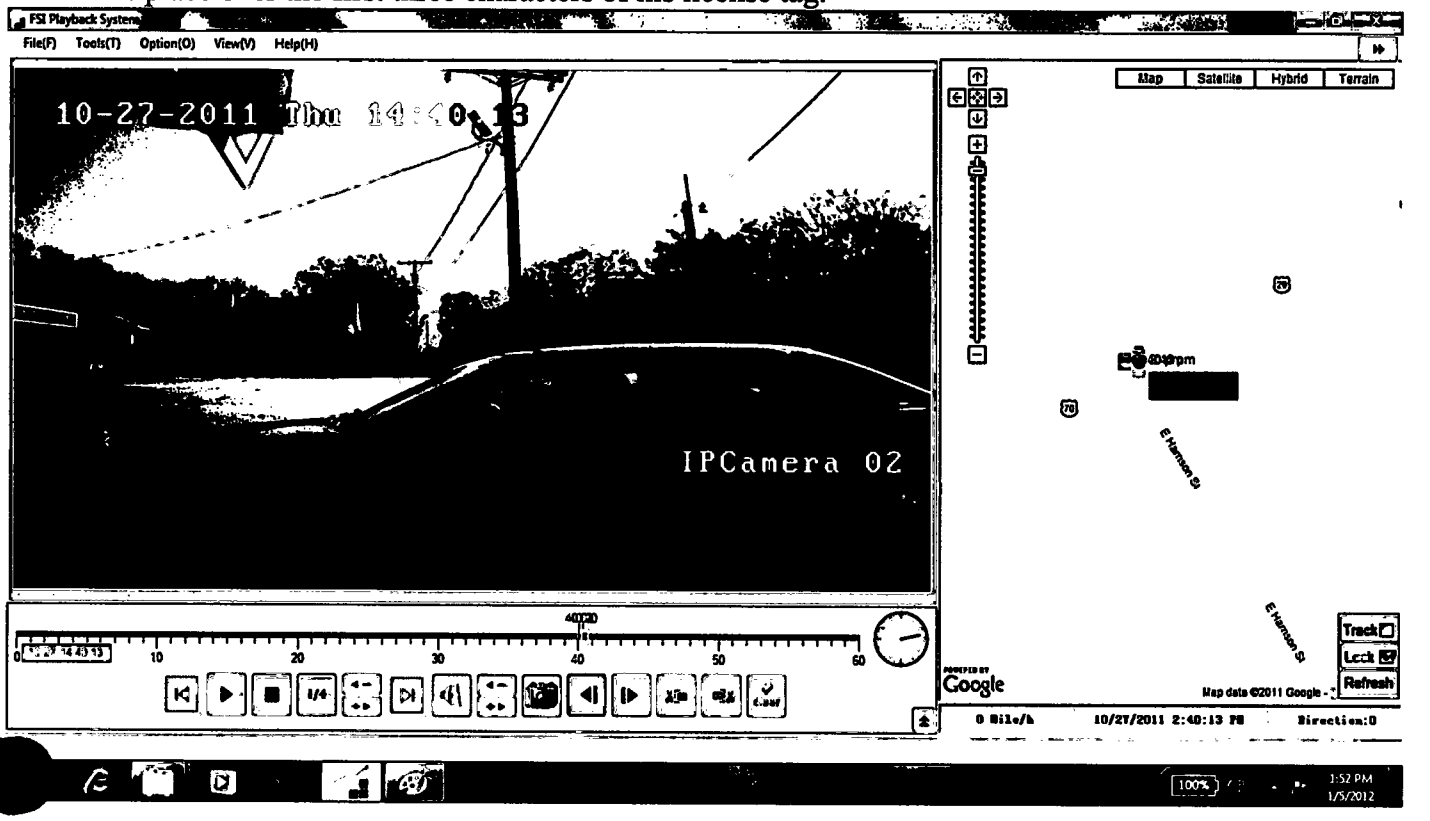
Currently the camera in the bottom left is selected. If users click on the bottom right camera where, the red arrow is located (just on click), that camera will now have the green background. Once that camera is selected

· can hit the "Camera Icon" in the control panel. This will create a bitmap image that can be saved by itself. Below is a sample of the image.



Sample E.

This extracted bitmap image has the camera channel with date and time watermarked. We can also see that the icle is a Blue Honda Accord with a North Carolina License Plate. We can clearly view the license plate n with some intense glare. To conceal the identity of this driver, who has been charge with a violation, a cover was place over the first three characters of his license tag.



Screen Shot 9.

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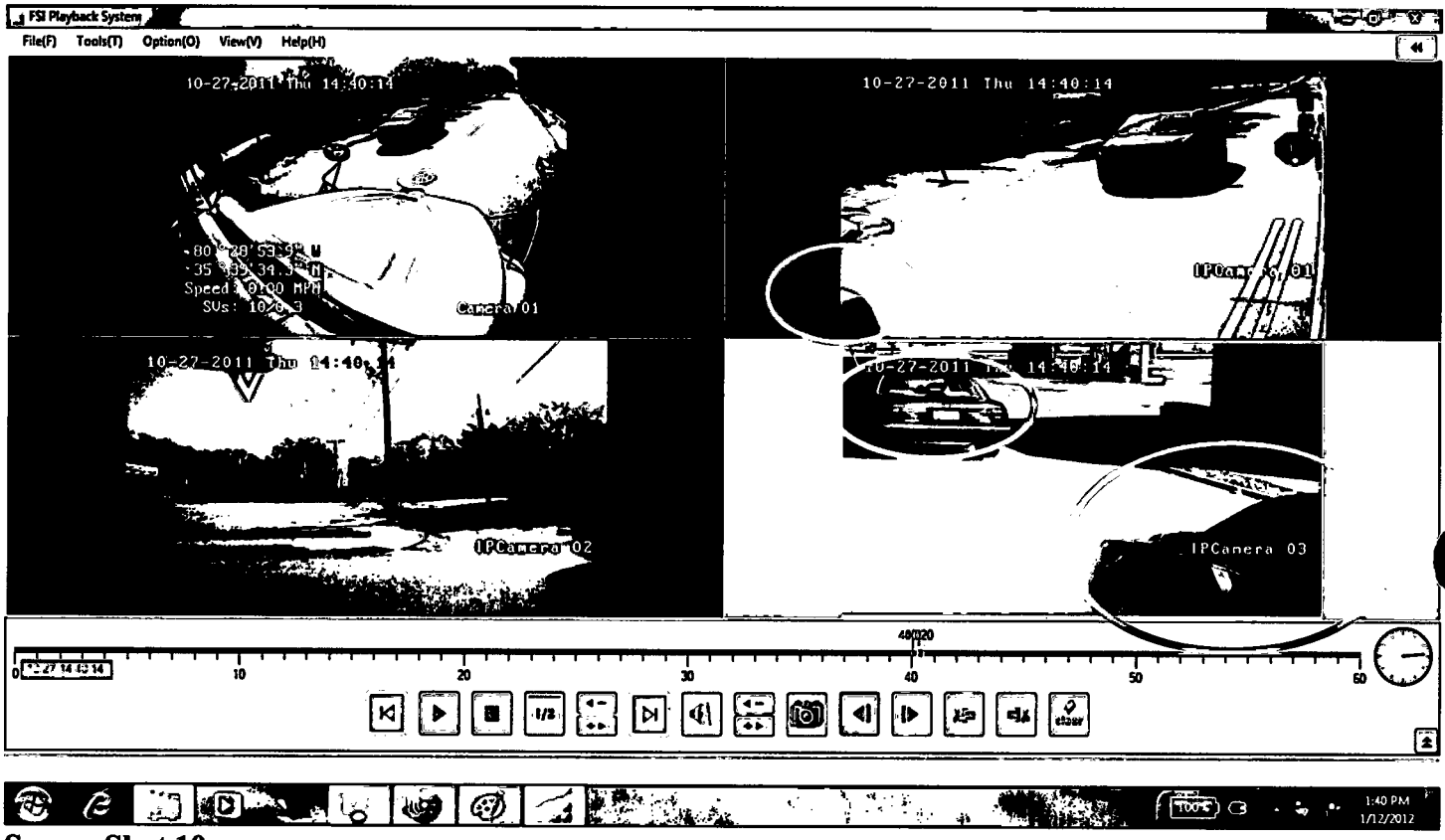
Once again the 2nd violation is now captured in full screen mode on IP Camera 2. From this point, at 2:40:13, we see that the driver is a black male, wearing a baseball cap and white T-Shirt and talking on his cell phone. The Panic Button is now watermarked on the map alongside the Stop arm. ***Printed copies might not show the detail of the screenshot. An electronic copy will be provided****

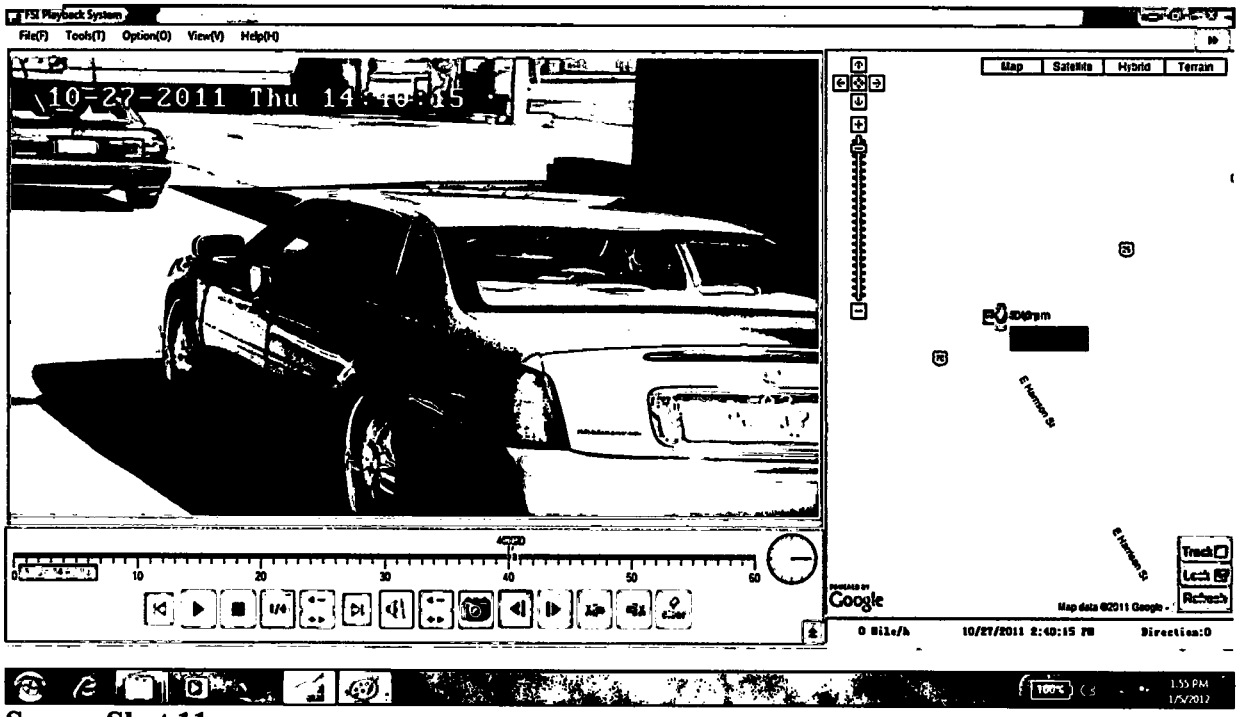


Screen Shot 10.

We took screen shot 10 hiding both the map & calendar windows. This expands the camera channels in to a full screen view mode. Once again a lot is going on!

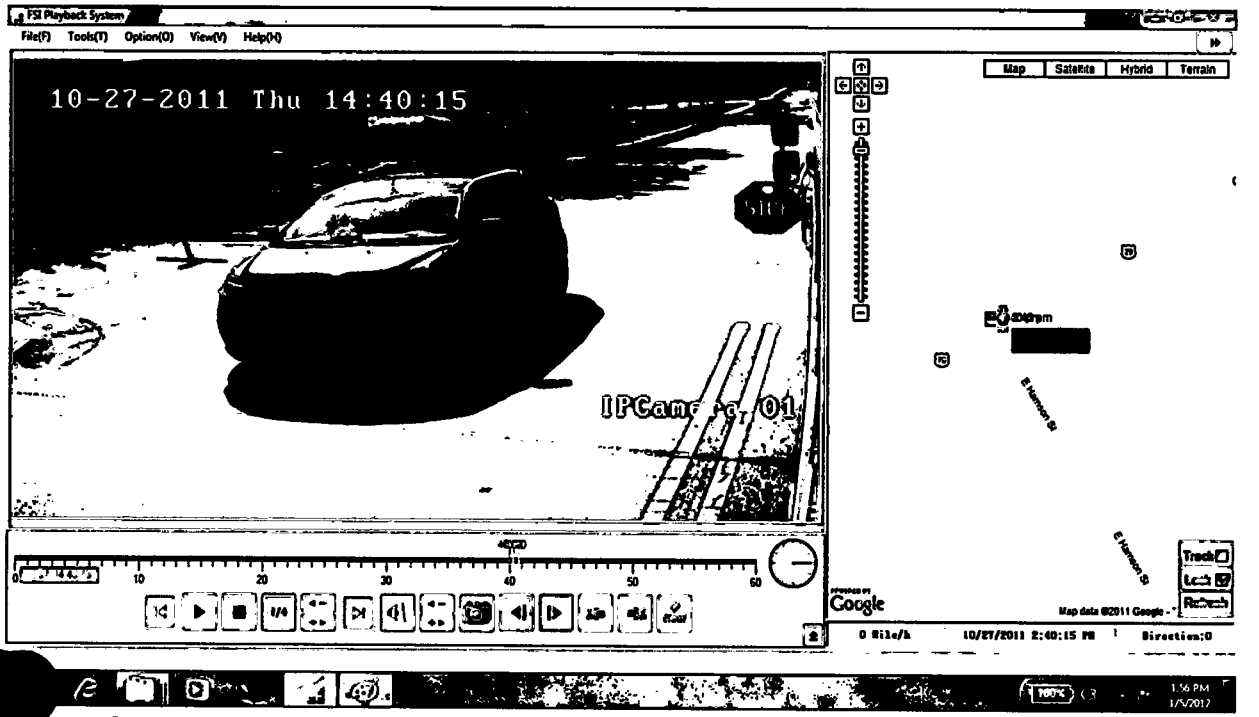
The blue circle shows the 1st violation vehicle driving away with the 2nd vehicle, circled in red, in IP camera channels 1 & 3. The 3rd vehicle is now in view on IP Camera channel 1 and barely seen on IP channel 2. In a matter of moments the license tag for the 2nd vehicle will be seen with a 3rd violation being captured. When the bus stopped and extended the stop arm at 2:40:11, the violation(s) did not take place...yet! Only 3 seconds later, two violations have taken place with a third in the act of performing a violation.

This collected data truly demonstrates how fast a violation occurs. Multiple violations can take place in a moment and it is virtually impossible for a driver to collect the data when their first instinct is the child's safety.



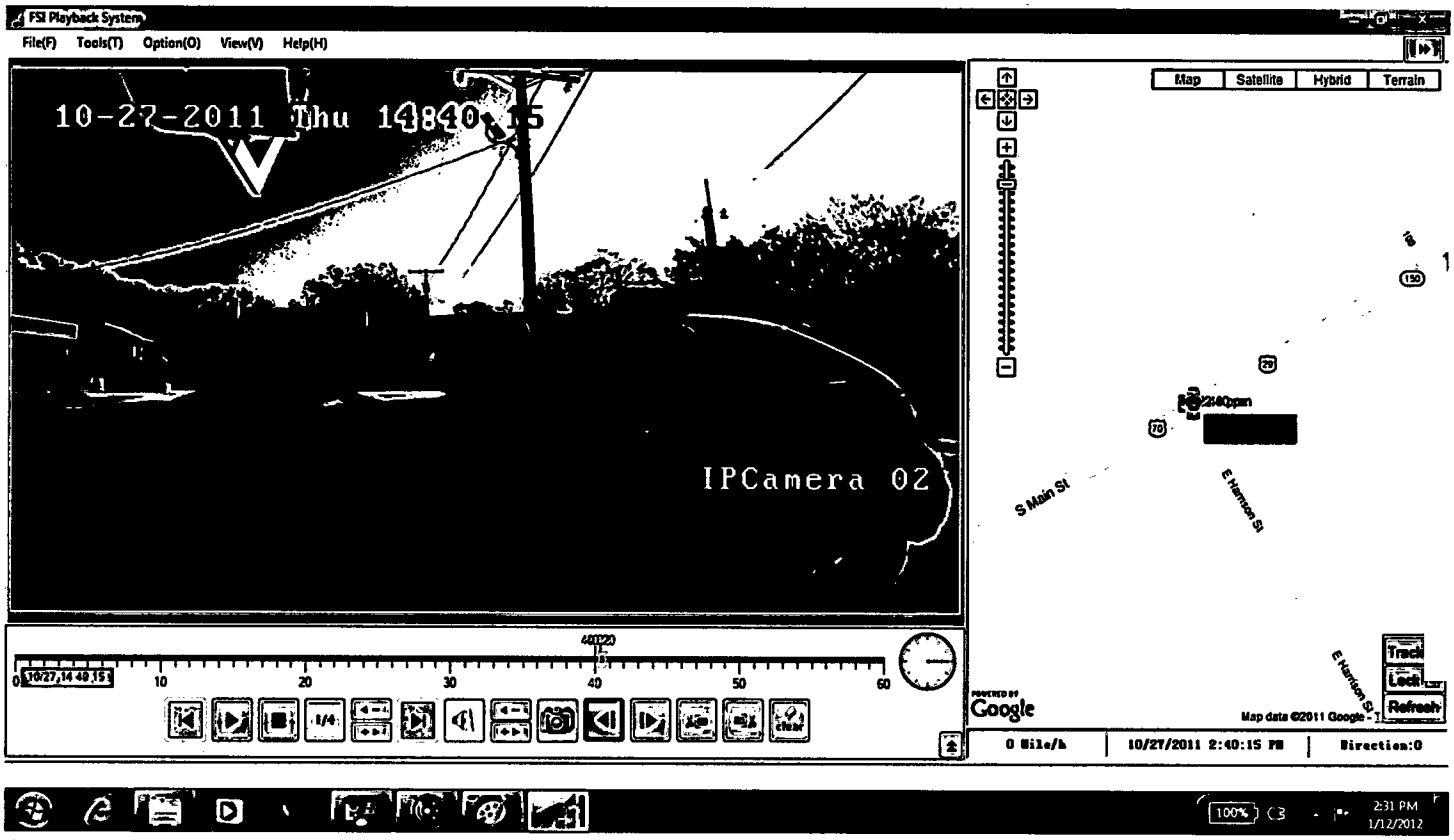
Screen Shot 11.

nents later the 2nd vehicle has reached the Field of View of IP Camera 3, as shown in Screen Shot 11. At the same time the 3rd vehicle is in the process of passing the Stop Arm shown in Screen Shot 12. Statistics from www.ncbussafety.org demonstrate that every 4th violation incident will capture multiple vehicles.



Screen Shot 12.

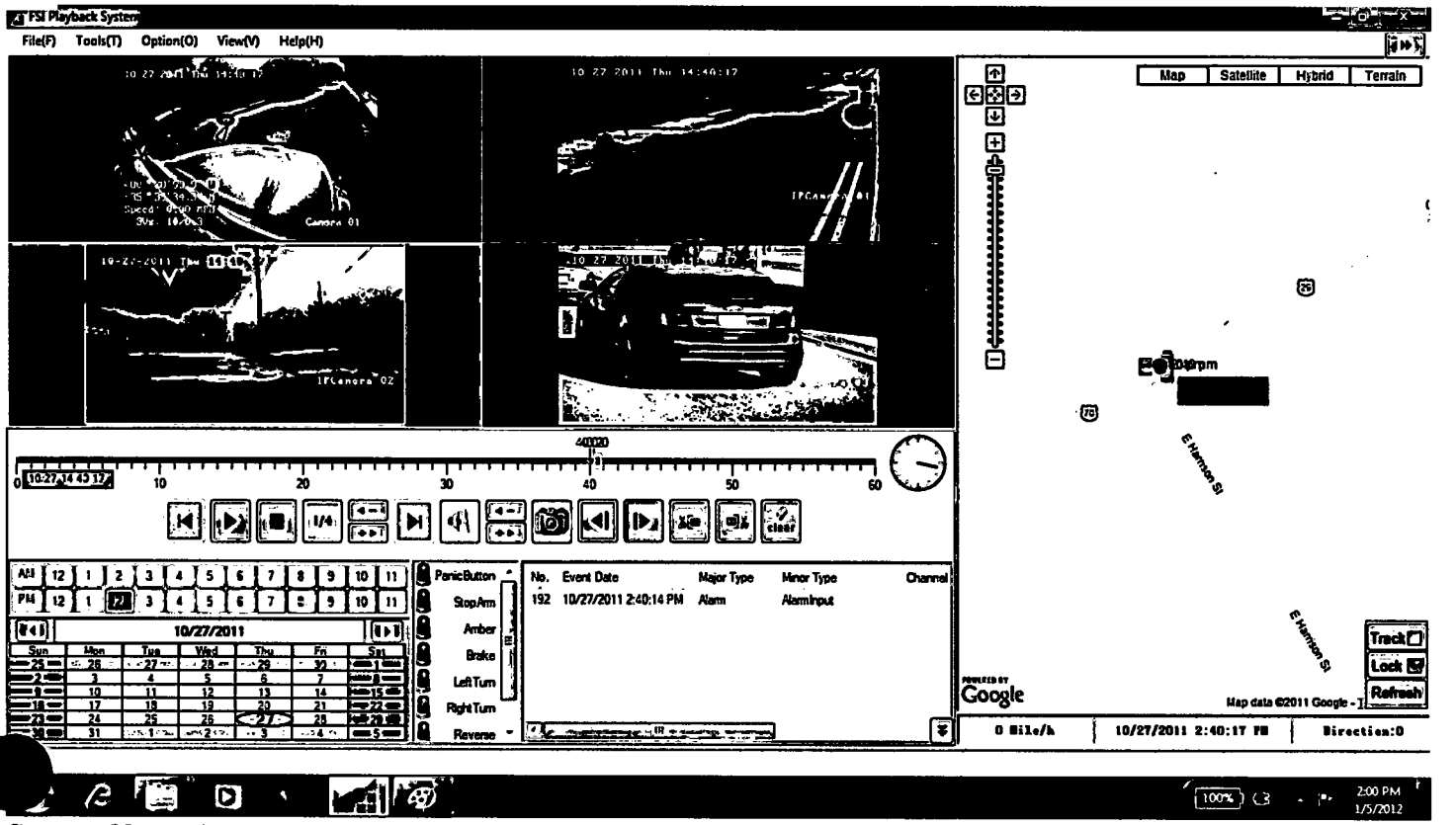
Staying consistent with the previous two violations, the 3rd motorist is also captured by IP camera2. From this screen shot we find that the vehicle operator is a white female wearing a white shirt with her hair pulled back. A total of three (3) violations at a single stop location took 3 seconds.



Screen Shot 13.

Luckily, these violations took place before the student exited the vehicle. This stop does have a student that is off the bus by the 21st second and across the street by the 24th second. Cameras are not going to stop motorist from illegally passing a stopped school bus with activated stop arm, but they can enforce law and provide local media with needed data that can be used to educate resident citizens. The Department of Motor Vehicles, in most all states, has no literature or signage relating to the hazards for failing to stop for a school bus. When motorist renew their license every 4-6 years, no sign is dedicated for this traffic infraction except for the Stop Sign itself. Most of all drivers are unaware that the warning lights are turned on approximately 300feet from the stop location.

Elementary schools will emphasize school bus safety with the focus to teach children the dangers that exist when entering or exiting the bus. The other reason for emphasizing School Bus Safety is that the children will hopefully be able to tell their parents. Art classes, in the elementary schools, have a yearly theme for drawing posters on School Bus Safety. These posters are entered in to a competition for the annual NAPT Trade Show where votes are collected. Top three posters earn the author a prize. Individual states have done this as well at the State level. The other reason for having kids drawing School Bus Safety Posters is that they are brought home and stuck on the wall or refrigerator, reminding parents to practice safe driving.



Screen Shot 14.

Above is the last screen shot. This shot captures the license plate of the last vehicle. Three separate vehicles, in a three second span, overtook a stopped school bus with stop arm activated. In five seconds enough data was collected to identify each vehicle, license plate with image on the driver. Both video clip and images can be extracted from the software. Map and Sensors will demonstrate the buses speed and activation of devices such as warning lights and stop arm

Question: What 5 things must take place for a violation?

ANSWER:
1. THE SCHOOL BUS MUST BE COMPLETELY STOPPED
2. The RED lights must be activated
3. The stop arm must be activated
4. The passenger door must be open
5. The bus must be stopped to load/unload students

***Information extracted from www.ncbussafety.org Document: A Cooperative Program to Reduce Incidents of Vehicles Passing Stopped School Buses in a Coastal Region of North Carolina.*

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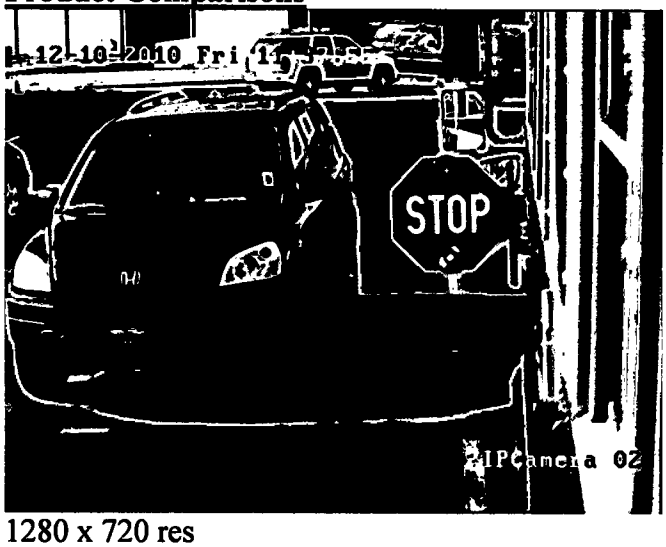
Product Comparisons



1280 x 720 res
Taken by the Fortress Mobile IP Camera

704 x 240 res "provided by Watauga Cty Schools"
Taken by an Analog Camera

Attached are 2 photos! The second photo was provided by Watauga County Schools. These photos are provided side by side to demonstrate the difference in technology.

Request for Demonstration:

Fortress Systems would appreciate the opportunity to demonstrate our Standard School Bus Surveillance Solution or Stop Arm Camera Solution. Here we would install our solution on an identified vehicle for specific routes determined by the Atlanta Public Schools Transportation Department. Necessary training on both the software and hardware will be provided.

Fortress Systems would be capable of providing this installation before the end of April, 2012.

Community Impact:

The focus on installing this technology is to provide a safer commute for students. Cameras by themselves cannot stop motorist from routinely passing a school bus that is stopped with the stop arm activated. Through cooperation with the state Department of Motor Vehicles, Law Enforcement and local TV & Radio, Schools can create awareness that there is a problem with unlawful stop arm violations and that technology is now in place.

Risk, and the potential for risk, must be eliminated for a safe riding environment. Installing cameras without media coverage to notify the public will not solve the problem. Most likely over 50% of the drivers captured performing an illegal pass will reside within the county. Violations are caused by drivers being ignorant to the law as well as being distracted. We stand ready and are excited to implement this technology to enforce safety and create further awareness in your County or Local School District on the dangers of passing a Stop School bus with stop paddle activated.

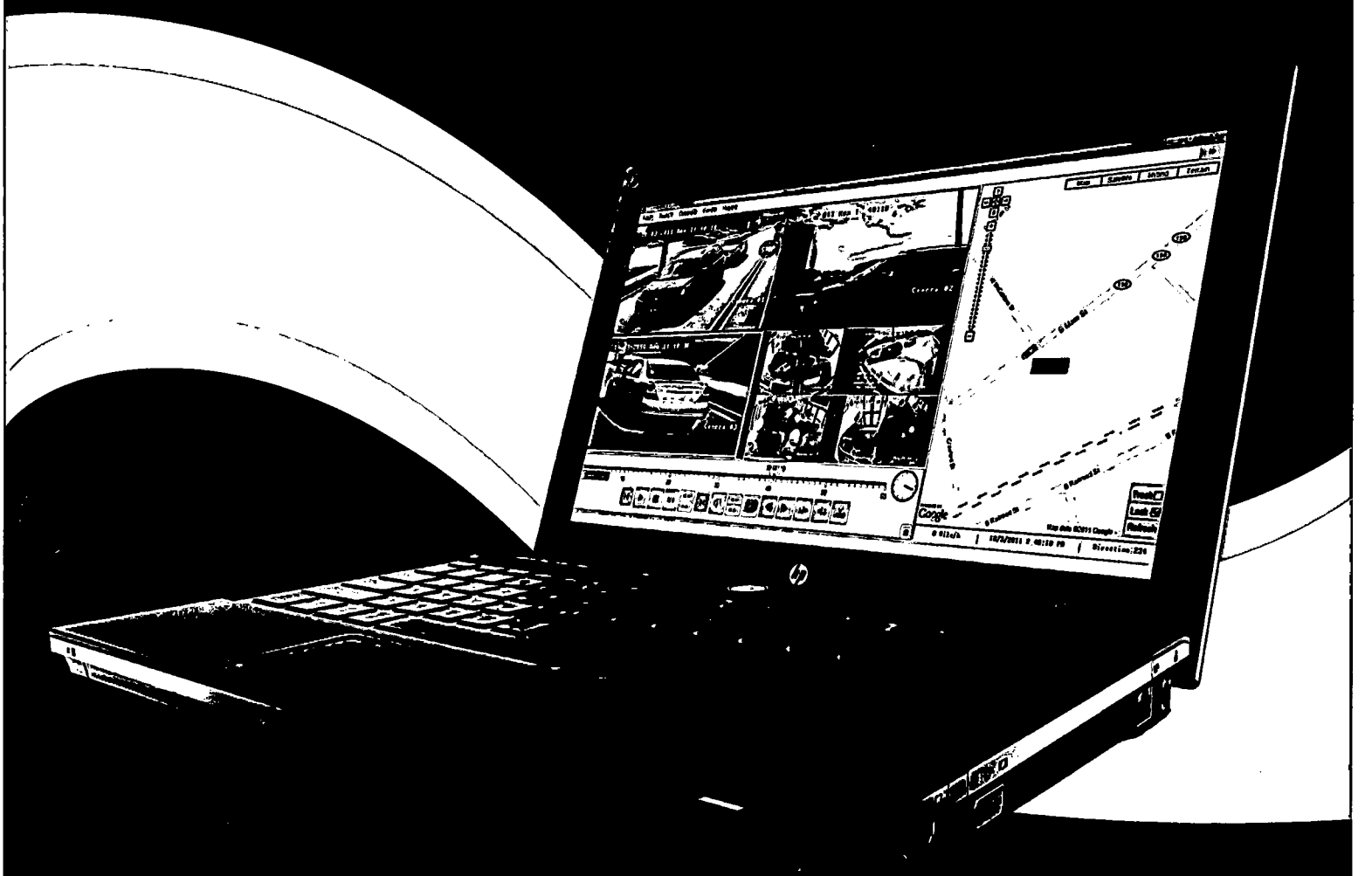
Supplying data to the State or Department of Education should also be a goal. Doing statewide counts provides some sample data, however we have to question this data and the source of this data. Relying on drivers, even those that have had routine training, provide different driving habits with a varying degree of caution. Some violations that have been detected by our camera systems demonstrating a procedurally wrong stop where the warning lights were not activated, or activated too late, or the driver came to a very abrupt stop where the Stop Arm was released before the bus was stopped. Some video also displayed the driver entrapping motorist by activating the stop arm before the school bus came to a complete stop.

The school system, not the contracted vendor, needs to be responsible for collecting data and offering statistics to the state and citizens. This data should show how many violations have been detected, locations where violations have been recorded, the recurrence and repetition of violations both county wide and to address areas of concern. Sample video should be provided to TV media to demonstrate the technology in place and the images being captured. Educating the public to deter illegal future violations should be a priority.

not our belief, or best practice business approach, that a business should be profiting from a revenue stream based on capturing motorist illegally passing a stopped school bus. Our goal is to provide a working solution that can be used to enforce law, create driver awareness and be used to drastically reduce the violations and to minimize risk. Our goal is simple, zero (0) violations!

Solid Reporting for Fleet Management

mobile surveillance solutions for ***Pupil Transportation***



easily locate, retrieve, view, save, and share any captured video data

Fortress Systems International | (704) 405-5000 | www.fortressmobile.com

Expert Software

Fortress Mobile offers the ***absolute best value*** in a Mobile Video Surveillance solution for your transit operations.

View clear, crisp high resolution video within our Playback Software. With ***free Life-Time software updates*** and expanding features Fortress is a leader in pupil transportation surveillance and tracking.

Reporting Features:

- Engine Start/Stop Reports
- Stop Arm Reporting
- Vehicle Mapping
- Vehicle Location Tracking with Address

Solid Solutions

Our solid internal camera solutions are built for school systems in mind.

Our solutions are designed and tested to ***record and store video, audio and GPS data*** in the harshest mobile environments using military tested vibration damping technology.

The ***FM621G*** (SD Card) and the ***FM623G*** (Hard Drive) offer a quick video retrieval process along with ease of use.

Both solutions come with our signature Playback Software with ***embedded reporting features that assist in fleet management.***

Stop Arm System

The Fortress Mobile Stop Arm Solution allows users to simultaneously view up to four internal and four external cameras with a selected audio channel, GPS map with vehicle location and sensor data.

The first on the market with high resolution digital cameras, Fortress Mobile offers ***a complete solution to protecting school buses inside and out.***

With internal and external mounted cameras users can watch students inside the bus and ***Catch Stop-Arm Violations*** occurring outside the bus all from the same easy to use playback software.

Get the best mobile video solution with Fortress Mobile's line of superior and affordable products.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 634
PROPOSED COMMITTEE SUBSTITUTE S634-CSRK-29 [v.2]

5/1/2013 7:56:08 PM

Short Title: Increase Penalties/Utilities Theft. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR INTERFERENCE WITH GAS, WATER, OR ELECTRIC LINES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-151 reads as rewritten:

"**§ 14-151. Interfering with gas, electric and steam ~~appliances.~~appliances or meters; penalties.**

(a) ~~If~~ It shall be unlawful for any person ~~shall~~ to willfully, with intent to injure or defraud, commit any of the following ~~acts~~ acts: ~~set forth in the following subdivisions, he shall be guilty of a Class 2 misdemeanor:~~

(1) Connect a tube, pipe, wire or other instrument or contrivance with a pipe or wire used for conducting or supplying illuminating gas, fuel, natural gas or electricity in such a manner as to supply such gas or electricity to any burner, orifice, lamp or motor where the same is or can be burned or used without passing through the meter or other instrument provided for registering the quantity ~~consumed; or,~~consumed.

(2) Obstruct, alter, bypass, tamper with, injure or prevent the action of a meter or other instrument used to measure or register the quantity of illuminating fuel; natural ~~gas~~ gas, water, or electricity passing through such meter ~~consumed in a house or apartment, or at an orifice or burner, lamp or motor, or by a consumer or~~ by a ~~other~~ person other than an employee of the company owning or supplying any ~~gas~~ gas, water, or electric meter, who willfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any meter so detached or ~~disconnected; or,~~disconnected.

(3) In any manner whatever change, extend or alter any service or other pipe, wire or attachment of any kind, connecting with or through which natural or artificial gas or electricity is furnished from the gas mains or pipes of any person, without first procuring from said person written permission to make such change, extension or ~~alterations; or,~~alteratons.

(4) Make any connection or reconnection with the gas mains, water pipes, service pipes or wires of any person, furnishing to consumers natural or artificial ~~gas~~ gas, water, or electricity, or turn on or off or in any manner interfere with any valve or stopcock or other appliance belonging to such person, and connected with his service or other pipes or wires, or enlarge the orifices of mixers, or use natural gas for heating purposes except through

mixers, or electricity for any purpose without first procuring from such person a written permit to turn on or off such stopcock or valve, or to make such connection or reconnections, or to enlarge the orifice of mixers, or to use for heating purposes without mixers, or to interfere with the valves, stopcocks, wires or other appliances of such, as the case may ~~be; or,~~be.

(5) Retain possession of or refuse to deliver any mixer, meter, lamp or other appliance which may be leased or rented by any person, for the purpose of furnishing gas, water, electricity or power through the same, or sell, lend or in any other manner dispose of the same to any person other than such person entitled to the possession of the ~~same; or,~~same.

(6) Set on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person in conveying gas to consumers, or interfere in any manner with the wells, pipes, mains, gateboxes, valves, stopcocks, wires, cables, conduits or any other appliances, machinery or property of any person engaged in furnishing gas to consumers unless employed by or acting under the authority and direction of such ~~person; or,~~person.

(7) Open or cause to be opened, or reconnect or cause to be reconnected any valve lawfully closed or disconnected by a district steam ~~corporation; or~~corporation.

(8) Turn on steam or cause it to be turned on or to reenter any premises when the same has been lawfully stopped from entering such premises.

(9) Reconnect electricity, gas, or water connections or otherwise turn back on one or more of those utilities when they have been lawfully disconnected or turned off by the provider of the utility.

(10) Alter, bypass, interfere with, or cut off any load management device, equipment, or system which has been installed by the electricity supplier for the purpose of limiting the use of electricity at peak-load periods, provided, however, if there has been a written request to remove the load management device, equipment, or system to the electric supplier and the electric supplier has not removed the device within two working days, there shall be no violation of this section.

(b) Any meter or service entrance facility found to have been altered, tampered with, or bypassed in a manner that would cause such meter to inaccurately measure and register the electricity, gas, or water consumed or which would cause the electricity, gas, or water to be diverted from the recording apparatus of the meter shall be prima facie evidence of intent to violate and of the violation of this section by the person in whose name such meter is installed or the person or persons so using or receiving the benefits of such unmetered, unregistered, or diverted electricity, gas, or water.

(c) For the purposes of this section, the term "gas" shall mean all types and forms of gas, including, but not limited to, natural gas.

(d) Criminal violations of this section shall be punishable as follows:

(1) A violation of this section is a Class 1 misdemeanor.

(2) A second or subsequent violation of this section is a Class H felony.

(3) A violation of this section that results in significant property damage or public endangerment is a Class F felony.

(4) Unless the conduct is covered under some other provision of law providing greater punishment, a violation that results in the death of another is a Class D felony.

(e) Whoever is found in a civil action to have violated any provision ~~hereof~~ of this section shall be liable to the electric, gas or water supplier in triple the amount of losses and damages sustained or five ~~hundred~~ thousand dollars ~~($500.00),~~($5,000), whichever is greater.

(f) Nothing in this section shall be construed to apply to licensed contractors while performing usual and ordinary services in accordance with recognized customs and standards."

SECTION 2. G.S. 14-151.1 is repealed

SECTION 3. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 634:
Increase Penalties/Utilities Theft

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 1, 2013
Introduced by:	Sen. Newton	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S634-CSRK-29		Committee Counsel

SUMMARY: ***This act increases the penalties for interfering with electric, gas, or water lines and meters. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.***

BILL ANALYSIS: The act:

- Combines into a single statute two statutes that make it unlawful to interfere with gas, water, or electric lines or meters, and repeals one of the statutes.
- Provides that if a meter or service entrance facility is altered, tampered with, or bypassed so that a false measure of the electricity, gas, or water occurs, it is prima facie evidence of the intent to violate the law by the person in whose name such meter is installed, or the person using or receiving the benefits of the electricity, gas, or water.
- Clarifies that the term "gas" means all types and forms of gas, including, but not limited to, natural gas.
- Provides that a first violation is a Class 1 misdemeanor (currently Class 2); a second or subsequent violation is a Class H felony; a violation that results in significant property damage or public endangerment is a Class F felony; and unless the conduct is covered under some other provision of law providing greater punishment, a violation that results in the death of another is a Class D felony.
- Currently, a person may be held civilly liable to an electric, gas, or water supplier for triple the amount of losses and damages, and a fine of up to $500, whichever is greater. The act increases the maximum fine to $5,000.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

S634-smrk(csrk-29)

O. Walker Reagan
Director

S634-SMRK-69 CSRK-29 -V2

Research Division
(919) 733-2578

SENATE BILL 443:
Amend Abandoned Firearms Law

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 1, 2013
Introduced by:	Sen. Brock	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S443-CSRK-42		Committee Counsel

SUMMARY: ***This act authorizes a judge to order that an abandoned firearm be sold at a public auction to persons licensed as firearms collectors, importers, or manufacturers. This act becomes effective July 1, 2013, and applies to any firearm found or received by a local law enforcement agency on or after that date.***

[As introduced, this bill was identical to H714, as introduced by Reps. Schaffer, Faircloth, which is currently in House Judiciary Subcommittee B.]

CURRENT LAW: A judge may order that a firearm be turned over to the sheriff to be destroyed; turned over to the law enforcement agency applying for disposition for the official use of the agency; or sold, traded, or exchanged by the agency to a federally licensed firearm dealer.

BILL ANALYSIS: This act provides additional authority to a judge to order that an abandoned firearm be sold at a public auction to persons licensed as firearms collectors, importers, or manufacturers.

EFFECTIVE DATE: The act becomes effective July 1, 2013, and applies to any firearm found or received by a law enforcement agency on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 443
PROPOSED COMMITTEE SUBSTITUTE S443-CSRK-42 [v.3]

5/1/2013 5:30:29 PM

Short Title: Amend Abandoned Firearms Law. (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SALE OF ABANDONED FIREARMS TO PERSONS LICENSED AS FIREARMS COLLECTORS, IMPORTERS, OR MANUFACTURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-11.2(e) reads as rewritten:

"(e) Disposition of Firearm. – The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the law enforcement agency applying for the order of disposition is located or by the sheriff's duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

(2) By ordering the firearm turned over to the law enforcement agency applying for the disposition of the firearm for (i) the official use of the ~~agency or~~ agency, (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm ~~laws.~~ laws, or (iii) by selling the firearm at a public auction to persons licensed as firearms collectors, importers, or manufacturers. The court may order a disposition of the firearm pursuant to this subsection only if the firearm has a legible, unique identification number."

SECTION 2. This act becomes effective July 1, 2013, and applies to any firearm found or received by a law enforcement agency on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 634 (First Edition)

SHORT TITLE: Increase Penalties/Gas Theft.

SPONSOR(S): Senator Newton

FISCAL IMPACT

($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE December 1, 2013 and applies to offenses committed on or after that date.

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: $165 - $3,465 per case
- Indigent Defense Services: $130 - $436 in district court per case
  $272 - $933 in superior court without a trial per case
  $1,199 - $3,201 in superior court with a trial per case
- Prison Section: $8,220 in the first year, $24,594 in subsequent years
- Community Corrections: $980-$3,594 per case

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill amends existing G.S. 14-151, Interfering with gas, electric and steam appliances; penalties, to make it unlawful for any person to willfully, with intent to injure or defraud, commit any of the acts set forth in subdivisions (1) through (10) of subsection (a). The Class 2 misdemeanor penalty for violations of this section is removed from subsection (a). Subdivisions (2), (4), and (5) are amended to include "water" and make other clarifying changes.

New subdivision (9) makes it unlawful to reconnect electricity, gas, or water connections or otherwise turn back on one or more of those utilities when they have been lawfully disconnected or turned off by the provider of the utility. New subdivision (10) makes it unlawful to alter/bypass/interfere with any electric meter installed for the purpose of limiting the use of electricity at peak-load periods, unless there has been a written request to the utility to remove the device. If the device has not been removed within two working days there shall be no violation under this section.

New subsection (d) sets forth new criminal penalties for violations of this section. Violations of subdivisions (1) through (8) are Class F felonies. A violation of subdivision (9) or (10) is a Class 1 misdemeanor for the first offense; a Class H felony for the second offense; a Class G felony for the third offense; a Class F felony for offenses resulting in significant property damage or public endangerment; and a Class D felony for an offense that results in the death of another, unless the conduct is covered under some other provision of law providing greater punishment.

New subsection (f) provides an exception that nothing in this section shall be construed to apply to licensed contractors while performing usual and ordinary services in accordance with recognized customs and standards.

Section 2 repeals G.S. 14-151.1, Interfering with electric, gas or water meters; prima facie evidence of intent to alter, tamper with or bypass electric, gas or water meters; unlawful reconnection of electricity, gas, or water; civil liability.

This bill has an effective date of December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

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

In FY 2011-12 there were 33 defendants charged with diverting utility use under G.S. 14-151, which is currently a Class 2 misdemeanor. Of those, four (12%) were convicted. Under this bill these offenses would now be punished as Class F felonies. Misdemeanors are handled in district court, but all pleas and trials for Class F felonies are handled in superior court. As the class F felonies in this bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for those offenses increased from Class 2 misdemeanors to the Class F felonies, the average cost to the court will be $912 per charge. If the same number of charges occur, the cost would be $30,096 (33 charges times $912).

Because violations of new subdivisions (9) and (10) represent new offenses, AOC does not have data upon which to estimate the number of charges that may arise. The offense of interfering with a utility meter that was repealed in Section 2 is incorporated into these subdivisions, but AOC does not have data on the circumstances involved in these offenses (see list in table below). AOC data shows that in FY 2011-12 there were 208 defendants charged with this offense, but, because the circumstances are unknown, the number of defendants that would fall into the different charge class categories is unknown. Of those charged with this offense, 34 (16%) were convicted.

The table below shows the average cost for a disposition for each charge class associated with these charges.

General Statute	Circumstance	Charge Class	Cost per Disposition
14-151(d)(2)(e)	Results in death of another	Class D Felony	$3,465
14-151(d)(2)(d)	Results in significant property damage or public endangerment	Class F Felony	$912
14-151(d)(2)(c)	Third offense	Class G Felony	$752
14-151(d)(2)(b)	Second offense	Class H Felony	$501
14-151(d)(2)(a)	First offense	Class 1 Misdemeanor	$165

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

General Statute	Current Class	Proposed Class	Per Case Original Cost for Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for Private Assigned Counsel
14-151(d)(1)	Class 2 MD	Class F Felony	$166	$296	$130
14-151(d)(2)(a)	N/A	Class 1 MD	$0	$166	$166
14-151(d)(2)(b)	N/A	Class H Felony	$0	$235	$235
14-151(d)(2)(c)	N/A	Class G Felony	$0	$272	$272
14-151(d)(2)(d)	N/A	Class F Felony	$0	$296	$296
14-151(d)(2)(e)	N/A	Class D Felony	$0	$436	$436

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

General Statute	Current Class	Proposed Class	Per Case Original Cost for Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for Private Assigned Counsel
14-151(d)(1)	Class 2 MD	Class F Felony	$321 non-trial $847 trial	$593 non-trial $2,046 trial	$272 non-trial $1,199 trial
14-151(d)(2)(a)	N/A	Class 1 MD	$0 non-trial $0 trial	$321 non-trial $847 trial	$321 non-trial $847 trial
14-151(d)(2)(b)	N/A	Class H Felony	$0 non-trial $0 trial	$446 non-trial $1,180 trial	$446 non-trial $1,180 trial
14-151(d)(2)(c)	N/A	Class G Felony	$0 non-trial $0 trial	$534 non-trial $1,524 trial	$534 non-trial $1,524 trial
14-151(d)(2)(d)	N/A	Class F Felony	$0 non-trial $0 trial	$593 non-trial $2,046 trial	$593 non-trial $2,046 trial
14-151(d)(2)(e)	N/A	Class D Felony	$0 non-trial $0 trial	$933 non-trial $3,201 trial	$933 non-trial $3,201 trial

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add six or more inmates to the prison system by the end of FY 2014-15.

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	**June 30 2014**	**June 30 2015**	**June 30 2016**	**June 30 2017**
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	***0***	***4+***	***6+***	***6+***	***6+***
5. Additional Beds Required					

* The Sentencing and Policy Advisory Commission provides two year threshold projections. Projections beyond the two year horizon are estimates.

The Sentencing Commission and the Department of Public Safety were unable to estimate the additional number of inmates that could be sentenced to prison from other sections of this bill. The Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statutes.

The cost to add one additional inmate to the prison system is $11.23 per day, which includes the cost of food, clothing, and health care. Based on estimates provided by the Sentencing Commission, there would be at least four additional inmates in the prison section in the first year, for a total cost of $8,220 ($11.23 for 183 days times 4 inmates). In every subsequent year, six (or more) inmates would be in the prison system, for a total cost of $24,594 ($11.23 for 365 days times 6 inmates).

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Section 1 of this bill reclassifies the existing offenses (subdivisions (a)(1) through (8)) from Class 2 misdemeanors to Class F felonies pursuant to G.S. 14-151d(1). In FY 2011-12, there were four Class 2 misdemeanor convictions under G.S. 14-151. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate punishment imposed for this offense class was 33 months. The average length of intermediate and community punishment imposed for Class 2 misdemeanors was 16 and 13 months, respectively. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence ranges from $2,178 ($3,594 for a Class F felony minus $1,416 for a Class 2 misdemeanant serving 13 months) to $1,852 ($3,594 for a Class F felony minus $1,742 for a Class 2 misdemeanant serving 16 months).

This bill also expands the existing offenses by adding references to "water and "bypass or tamper with" meters. This conduct was previously covered under G.S. 14-151.1(a). There were 34 Class 1 misdemeanor convictions under G.S. 14-151.1 during FY 2011-12. It is not known how many additional convictions may result from the proposed broadening of the current statute (reclassified to a Class F felony). All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate punishment imposed for this offense class was 33 months. The average length of intermediate and community punishment imposed for Class 1 misdemeanors was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence ranges from $1,960 ($3,594 for a Class F felony minus $1,634 for a Class 1 misdemeanant serving 15 months) to $1,634 ($3,594 for a Class F felony minus $1,960 for a Class 1 misdemeanant serving 18 months).

This bill also adds two new offenses – G.S. 14-151(a)(9) and G.S. 14-151(a)(10). This conduct was previously covered under G.S. 14-151.1(b1). In FY 2011-12, there were 34 convictions under this statute. The first offense for both offenses is a Class 1 misdemeanor. Of the 34 convictions, eleven had no prior convictions. Of those eleven, 27% received an active sentence. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day).

The second offense is a Class H felony, whether or not the first offense was a violation of a different subsection. It is not known how many offenders may be repeat offenders under the proposed statute. While the AOC database contains information on the number of prior conviction points, it does not contain information about specific offenses that are used to calculate the number of prior conviction points. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release

[5] Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate and community punishment imposed for this offense class was 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is $3,158 (870 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is $2,831 (780 days times $3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

The third offense is a Class G felony, whether or not the second offense was a violation of a different subsection. In FY 2011-12, 42% of Class G felony offenders received active sentences; 58% received intermediate sentences. All active Class G sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average length of intermediate punishment imposed for this offense class was 31 months. The average cost to community corrections for any individual convicted of a Class G felony who receives an intermediate sentence is $3,376 (930 days times $3.63 per day).

In addition, this bill makes it a Class F felony if the offense results in significant property damage or public endangerment. It is unknown if any of the 34 Class 1 convictions in FY 2011-12 resulted in significant property damage or public endangerment. In FY 2011-12, 53% of Class F felony offenders received active sentences; 47% received intermediate sentences. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5] The average lengths of intermediate punishment imposed for this offense class was 33 months. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence is $3,594 (990 days times $3.63 per day).

Finally, this bill makes the offense a Class D felony if it results in the death of another. It is unknown if any of the 34 Class 1 convictions in FY 2011-12 resulted in the death of another. In FY 2011-12, 100% of Class D felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is $1,325 per offender ($3.63 per day times 365 days).[5]

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None
FISCAL RESEARCH DIVISION: (919) 733-4910

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DATE: May 2, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 574
PROPOSED COMMITTEE SUBSTITUTE S574-CSRK-30 [v.9]
5/1/2013 2:03:55 PM

Short Title: Appearance Bond Valid For Certain Time Period. (Public)

Sponsors:

Referred to:

April 2, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN APPEARANCE BOND FOR A DEFENDANT CHARGED WITH CERTAIN MISDEMEANORS IS ONLY VALID FOR A CERTAIN PERIOD OF TIME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"...

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is automatically terminated at an earlier time ~~if:~~if any of the following occur:

(1) A judge authorized to do so releases the obligor from his ~~bond; or~~bond.

(2) The principal is surrendered by a surety in accordance with G.S. ~~15A-540; or~~15A-540.

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. ~~15A-544.3; or~~15A-544.3.

(4) Prayer for judgment has been continued indefinitely in the district ~~court.~~court.

(h1) The obligation of a surety, as defined in G.S. 15A-531(8), is automatically terminated when 36 months have passed from the date of release on a bail bond where the defendant is charged with a misdemeanor, except for an offense involving impaired driving, as defined in G.S. 20-4.01(24a). The obligation of the defendant on the bail bond shall remain until such time as it terminates under other provisions of this section."

SECTION 2. The Administrative Office of the Courts shall modify the appearance bond and release form to include notice to the bond principal of the provisions in G.S. 15A-534(h1), as set forth in section 1 of this act.

SECTION 3. Any professional bondsman or insurance company obligated on a bond subject to termination under this act that was executed prior to the effective date of this act shall, as a condition for termination of their obligation on the bond, provide written notice to the defendant at the defendant's last known mailing address that their obligation on the bond will terminate 36 months after the bond was provided, or 30 days after the notice was mailed, whichever date is later.

SECTION 4. This act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.

SENATE BILL 574: Appearance Bond Valid For Certain Time Period

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 1, 2013
Introduced by:	Sen. Randleman	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S574-CSRK-30		Committee Counsel

SUMMARY: ***This act amends the law which provides for the termination of an obligor on an appearance bond by making the termination automatic on the occurrence of the listed events, and releases the surety from a bond after 36 months. The act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.***

BILL ANALYSIS: The current law provides when the person providing an appearance bond is released from the obligation. The act:

- Provides that the obligor would be released automatically from the obligation at the occurrence of the listed event.
- Provides that the surety would be released from the obligation on the bond 36 months from the date of release on a bail bond where the defendant is charged with a misdemeanor. The provision would not apply if the offense involving impaired driving.
- Directs the Administrative Office of the Courts to modify the appearance bond and release form to provide a bond principal with notice of the provisions of the act.
- Requires professional bondsmen or insurance companies obligated on a bond subject to termination under this act (retroactive application), to provide notice to the defendant that their obligation on the bond will terminate 36 months after the bond was provided, or 30 days after the notice was mailed, whichever date is later.

EFFECTIVE DATE: The act becomes effective December 1, 2013, and applies to bail bonds executed before, on, or after that date.

O. Walker Reagan
Director

S574-SMRK-55 CSRK-30 -V6

Research Division
(919) 733-2578

S574-smrk(CSRK-30)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 285
PROPOSED COMMITTEE SUBSTITUTE S285-CSRK-36 [v.3]

5/1/2013 7:50:40 PM

Short Title: Eliminate ILAC Requirement. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT UNDER G.S. 20-139.1 THAT A LABORATORY CONFORM TO FORENSIC SPECIFIC REQUIREMENTS AND BE ACCREDITED BY AN ACCREDITING BODY THAT IS A SIGNATORY TO THE INTERNATIONAL LABORATORY ACCREDITATION COOPERATION (ILAC) MUTUAL RECOGNITION ARRANGEMENT AND TO ALLOW FOR THE ADMISSIBILITY OF A CHEMICAL ANALYSIS UNDER G.S. 20-139.1, PERFORMED BY AN INDIVIDUAL WHO QUALIFIES AS AN EXPERT WITNESS UNDER RULE 702 OF THE NORTH CAROLINA RULES OF EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

. . .

(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, ~~or~~ any ~~other~~ laboratory approved for chemical analysis by the Department of Health and Human ~~Services,~~Services, or any other individual from any other laboratory who can demonstrate competence pursuant to subsection (c2) of this section are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. The results shall be certified by the person who performed the analysis. The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report may be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) **Expert Witness. -** A chemical analysis of blood or urine, to be admissible under this section, shall be performed by ~~a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses.~~an individual who qualifies as an expert witness under G.S. 8C-1, Rule 702. In making its findings under G.S. 8C-1, Rule 702(a)(1)-(3), the court shall take judicial notice and apply all of the following:

(1) An analysis of the defendant's blood, breath, or urine qualifies as sufficient data under G.S. 8C-1, Rule 702(a)(1).

(2) The principles and methods previously accepted as reliable within the meaning of G.S. 8C-1, Rule 702(a)(2) by the appellate courts of this State, including but not limited to, gas headspace chromatography, gas chromatography-mass spectrometry, liquid chromatography-mass spectrometry, and liquid chromatography-tandem mass spectrometry.

(3) As provided in subsection (e)(2) of this section, a defendant who has failed to timely object to the introduction of the affidavit into evidence has waived any and all objections to the admissibility of the affidavit, including the requirement under G.S. 8C-1, Rule 702(a)(3).

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and

b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at

which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement may be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and

(2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed by ~~a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses.~~an individual who qualifies as an expert witness under G.S. 8C-1, Rule 702..

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

. . .

(e1) Use of Chemical Analyst's ~~Affidavit in District Court.~~ Affidavit. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication and without the testimony of the analyst in any hearing or trial in ~~the District Court Division~~ any criminal proceeding of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. The affidavit shall include all of the following statements and information: (i) that the analyst is qualified by education, training, and experience to perform the analysis; (ii) the name and location of the laboratory where the analysis was performed;

(iii) that performing this type of analysis is part of that individual's regular duties; (iv) that the tests were performed pursuant to the standards applicable to that individual's duties, and the laboratory accrediting body's standards for that discipline; and (v) that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

An affidavit completed in accordance with this subsection shall be sufficient to constitute prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the investigating officer and the district attorney in the prosecutorial district in which the criminal charges are pending.

(e2) Except as governed by subsection (c1), (c2), or (c3) of this section, the State can only use the provisions of subsection (e1) of this section if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the affidavit would be used of its intention to introduce the affidavit into evidence under this subsection and provides a copy of the affidavit to the defendant, and

(2) The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the affidavit would be used that the defendant objects to the introduction of the affidavit into evidence.

The failure to file a timely objection as provided in this subsection shall be deemed a waiver of the right to object to the admissibility of the affidavit. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence. The case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court. Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the affidavit.

. . . ."

SECTION 2. This act becomes effective December 1, 2013.

SENATE BILL 285:
Eliminate ILAC Requirement

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 24, 2013
Introduced by:	Sen. J. Davis	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	PCS to First Edition S285-CSRK-36		

SUMMARY: ***This act removes the requirement, for cases involving impaired driving and the introduction of evidence relating to alcohol concentration, that the analysis of a body fluid of the defendant was performed by a laboratory that is accredited by an accrediting agency that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Arrangement For Testing. This act becomes effective December 1, 2013.***

BILL ANALYSIS: This act amends the statute that provides the procedures for chemical analyses in impaired driving cases, including the use of affidavits, the admissibility of evidence, and other evidentiary provisions. Included in the amendments are:

- An elimination of the requirement that the chemical analysis must, in order to be admissible, have been performed by an ILAC-accredited laboratory. The act provides that the chemical analyst must meet the requirements for an expert witness under Rule 702 of the North Carolina Rules of Evidence.
- A requirement that specific statements and information to be included in an affidavit by the chemical analyst.
- A requirement that the court take judicial notice of certain matters in making findings relating to concluding that the chemical analyst is an expert witness.
- A provision that restates the current waiver provision under current law: if a defendant, upon notice of the intent to introduce the affidavit into evidence, fails to timely object to the admission of the affidavit, all objections to its admissibility are waived, including whether the principles and methods used to analyze for alcohol concentration were reliably applied to the facts of the case.

EFFECTIVE DATE: This act becomes effective December 1, 2013.

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 5-21 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Christine Long	Raleigh	Berger
2. Annie Linn Johnson	Fayetteville	Meredith
3. Mary McCall Leland	Tarboro	Jenkins
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 05/02/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

May 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sheria Reid	SOG - LRS
Dennis Allen	NC Rifle + Pistol Assoc

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

May 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Hodgins	CFTF
Kathryn Robinson	NCRMA
John Monaghan	Piedmont Natural Gas
George Smith	Nexen Pruet

VISITOR REGISTRATION SHEET

Senate JII Committee — May 2, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
J. Tunnell	PNG
John Wilder	PNG
David Rheim	Tautman Sandy
Anthony Roulette	NRA
Mike Mann	NCBAA
David Denton	NCTA
David McGowan	NCPC
Tommy Senter	Moore and Van Allen
John Madler	NC Sentencing Commission
Bill Stoddin	VS
Cameron Hanley	MVA

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

May 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mark Black	NCBAA
Reggie Holley	NCBAA / The Longuine Group
Don Johnson	NCDMV / School Bus & Traffic Safety
Robbie Quinn	NCDMV
Derek Graham	DPI
Joe John	State Crime Lab
Thomas C. Caves, Jr.	NC SBI
Paul Oliver	FTA - DHHS
[illegible]	NCAOP
Bill Rowe	NC Justice Center
Todd Barlow	NC Advocates for Justice
[illegible]	NCRMA

Senate Committee on Judiciary II
Tuesday, May 7, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 59	Armed Security Guards in K-12. For discussion only	Sen. Rabin
SB 252	Increase Penalty/Controlled Substance Crimes.	Sen. J. Davis
SB 292	Immediate License Revocation for Refusal.	Sen. Brunstetter Sen. Rabon
SB 409	Amend Civil No-Contact Laws/Stalking.	Sen. Tarte
SB 465	Prohibit Use of Tax Zapper Software.	Sen. McKissick Sen. Brown Sen. Daniel
SB 553	LME/MCO Enrollee Grievances & Appeals.	Sen. Hise
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Sen. Daniel

Adjournment

Senate Judiciary II Committee
Tuesday, May 7, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, May 7, 2013 in room 1124 of the Legislative Building. Brandon O'Dell of Spring Lake, Evan McDow of Albemarle, Chad Lee of Greensboro, John Easterling of Laurinburg, and Donald Kernodle of Burlington served as pages. Senator Allran presided as chair.

S.B. 252 – Increase Penalty/Controlled Substance Crimes

Senator Davis was recognized to explain the bill. Senator Randleman moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would make it a Class G felony for an employee of a medical practitioner, pharmacy, hospital or other institution to misappropriate any controlled substances he or she may have access to by virtue of the employment. Senator McKissick was recognized to explain the incarceration note. Senator Bingham moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the incarceration note is attached.

S.B. 292 - Immediate License Revocation for Refusal

Lori Kroll, Senator Brunstetter's general counsel, was recognized to explain the bill and answer questions. Senator Bingham moved to adopt the proposed committee substitute for discussion and the motion carried. The PCS would amend the statutes to provide that upon a person's receipt of a notice of revocation of their driver's license, a request for a hearing does not stay the revocation period. Mr. Pell was recognized to answer questions. Senator Cook moved for a favorable report and the motion carried. Senator Bryant made a motion to reconsider and the motion carried. The bill remained in the Committee. A copy of the PCS, the summary, and the fiscal note is attached.

S.B. 465 – Prohibit Use of Tax Zapper Software

Senator McKissick was recognized to explain the bill. It would make it a Class H felony to knowingly sell, purchase, install, or use an automated sales suppression device or "zapper" to falsify electronic cash register records. Maggie Morressey, an analyst with the Fiscal Research Division, was recognized to answer questions. Senator Kinnaird moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 59 – Armed Security Guards in K-12

This bill was calendared for discussion only. Senator Rabin was recognized to explain the bill and Senator Randleman moved to adopt the PCS for discussion. The motion carried. The PCS would allow counties to establish school security officer programs in public schools and would authorize nonpublic schools to a security program in accordance with State law. Gregg Stahl, NC Sheriff's Association, and Leanne Winner, lobbyist for the NC School Boards Association, were recognized to oppose the PCS. A copy of the PCS and the summary is attached.

Due to time limitations the following bills were not heard:

S.B. 409 – Amend Civil No Contact Laws/Stalking
S.B. 553 – LEM/MCO Enrollee Grievances & Appeals
S.B. 676 – 10 Yr. Min for 2nd Gun Felony Conviction

The meeting adjourned at 10:58 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 7, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 59	Armed Security Guards in K-12. For discussion only	Senator Rabin
SB 252	Increase Penalty/Controlled Substance Crimes.	Senator J. Davis
SB 292	Immediate License Revocation for Refusal.	Senator BrunstetterSenator Rabon
SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 465	Prohibit Use of Tax Zapper Software.	Senator McKissick Senator Brown Senator Daniel
SB 553	LME/MCO Enrollee Grievances & Appeals.	Senator Hise
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, May 07, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

SB **465** Prohibit Use of Tax Zapper Software.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

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

SB **252** Increase Penalty/Controlled Substance Crimes.

Draft Number:	S252-PCS15262-RV-24
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Floyd McKissick will handle SB 465
Senator James Davis will handle SB 252

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 252
PROPOSED COMMITTEE SUBSTITUTE S252-CSRV-24 [v.1]

4/24/2013 6:10:02 PM

Short Title: Increase Penalty/Controlled Substance Crimes. (Public)

Sponsors:

Referred to:

March 12, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN VIOLATIONS OF THE CONTROLLED SUBSTANCES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-108(b) reads as rewritten:

"(b) Any person who violates this section shall be guilty of a Class 1 misdemeanor. Provided, that if the criminal pleading alleges that the violation was committed intentionally, and upon trial it is specifically found that the violation was committed intentionally, such violations shall be a Class I ~~felony.~~felony unless one of the following applies:

(1) A person who violates subdivision (7) of subsection (a) of this section and also fortifies the structure, with the intent to impede law enforcement entry, (by barricading windows and doors) shall be punished as a Class I felon.

(2) A person who violates subdivision (14) of subsection (a) of this section shall be punished as a Class G felon."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 252:
Increase Penalty/Controlled Substance Crimes

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 24, 2013
Introduced by:	Sen. J. Davis	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition S252-CSRV-24		Committee Counsel

SUMMARY: ***This proposed committee substitute for Senate Bill 252 would make it a Class G felony for an employee of a medical practitioner, pharmacy, hospital or other institution to misappropriate any controlled substances he or she may have access to by virtue of the employment.***

CURRENT LAW: G.S. 90-108(14) makes it unlawful for any employee of a registrant or practitioner *"who is authorized to possess controlled substances or has access to controlled substances by virtue of his employment, to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use or to take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use any controlled substance which shall have come into his possession or under his care."* If the criminal pleading alleges that the violation was committed intentionally, and at trial it is specifically found that the violation was committed intentionally, the violation would be a Class I felony.

For purposes of the Controlled Substances Act, "practitioner" includes a physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance within the normal course of professional practice or research. The term also includes a pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance within the normal course of professional practice or research.

BILL ANALYSIS: Senate Bill 252 would increase the penalty that applies when an employee of a registrant or practitioner misappropriates any controlled substance that the person has access to by virtue of his or her employment. The bill would make the offense punishable as a Class G felony, rather than a Class I felony.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 252 (First Edition)

SHORT TITLE: Increase Penalty/Controlled Substance Crimes.

SPONSOR(S): Senator J. Davis

FISCAL IMPACT

($ in thousands)

☑ Yes ☐ No ☐ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:	to	to	to	to	to
General Fund Expenditures:	16.9 to 21.6	37.8 to 47.4	37.8 to 47.4	37.8 to 47.4	37.8 to 47.4
Special Fund Revenues:	to	to	to	to	to
Special Fund Expenditures:	to	to	to	to	to
State Positions:	to	to	to	to	to
NET STATE IMPACT	($16.9) to ($21.6)	($37.8) to ($47.4)	($37.8) to ($47.4)	($37.8) to ($47.4)	($37.8) to ($47.4)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE: December 1, 2013 and applies to offenses committed on or after that date

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: $10,836 in the first year, $21,672 annually after that
- Indigent Defense Services: $1,932 - $3,864 in increased costs in superior court without a trial
  $6,692-$13,384 in increased costs in superior court with a trial
- Prison Section: $4,099 in the first year, $12,297 annually after that
- Community Corrections: $0-$980 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Subdivision (a)(14) of G.S. 90-108, Prohibited acts; penalties, currently makes it unlawful for a person who is an employee of a registrant or practitioner and who is authorized to possess controlled substances or has access to controlled substances embezzle or intend to embezzle any controlled substance which shall have come into his possession or under his care. Violation of G.S. 90-108 is currently a Class 1 misdemeanor unless it is found that the violation was committed intentionally, in which case it is a Class I felony. This bill would punish every violator of subdivision (a)(14) as a Class G felon.

This bill is effective December 1, 2013 and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

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

In FY 2011-12, 56 defendants were charged with the intentional violation of G.S. 90-108(10)(14). Of these, seven (12.5%) were convicted. This PCS would require that these defendants be charged with a Class G felony. For every additional person charged with a Class G felony offense, AOC estimates the average cost to the court would be $387 per case (the difference between the current Class I felony offense of $365 and the new, elevated Class G felony of $752). Using AOC data on the number of FY 2011-12 charges for this offense, it is estimated that the courts would see a cost of $21,672 annually due to the changes in this bill. Since the proposed legislation goes into effect December 1, 2013, there will be an increased fiscal impact to AOC for only half of the fiscal year. The costs associated with AOC will be roughly half what they are projected for in FY 2014-15. In FY 2013-14, AOC estimates that the cost would be $10,836.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. In district court, IDS estimates that the cost of a new Class G felony offense will result in an increase of $51 per case. In superior court, IDS estimates that the cost of a new Class G felony offense will result in an increase of $138 per case for a PAC attorney if the case does not go to trial and $478 if it does.

In FY 2011-12, 51.1% of felony non-trafficking offenders used IDS for defense. Assuming the offenders charged in FY 2011-12 had been prosecuted under this proposed legislation, the cost to Indigent Defense Services would have increased by the following amounts:

- $3,864 in superior court if no cases go to trial (28 offenders times $138 non-trial costs)
- $13,384 if they all go to trial (28 offenders times $478 trial costs).

Since the proposed legislation goes into effect December 1, 2013, there will be an increased fiscal impact to IDS for only half of the fiscal year. The costs associated with IDS will be roughly half what they are projected for in FY 2014-15. In FY 2013-14, IDS estimates that the additional cost would be $1,932 in superior court if no cases go to trial and $6,692 if they all go to trial.

Department of Public Safety –Prison Section

In FY 2011-12, there were seven convictions under G.S.90-108(a)(14), (currently a Class I felony). Impact on the prison population will occur if Class I convictions become Class G convictions under the proposed statute due to the higher rate of active sentences (42% for Class G compared to 18% for Class I) and longer average estimated time served (14 months compared to 6 months for Class I). Assuming these seven offenders had received an active Class G sentence the result is a need for an additional two beds in the first year and 3 beds in the second year.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add three inmates to the prison system by the end of FY 2014-15.

The cost to add one additional inmate to the prison system is $11.23 per day, which includes the cost of food, clothing, and health care. Based on estimates provided by the Sentencing Commission, there would be an additional two inmates in the prison section in the first year, for a total cost of $4,099 ($11.23 for 183 days times 2 inmates). In every subsequent year, three inmates would be in the prison system, for a total cost of $12,297 ($11.23 for 365 days times 3 inmates).

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	**June 30 2014**	**June 30 2015**	**June 30 2016**	**June 30 2017**
1. Inmates[2]	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill[3]	***0***	***2***	***3***	***3+***	***3+***
5. Additional Beds Required					

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, there were seven felony Class I convictions under subdivision (a)(14) of G.S. 90-108. 42% of all Class G felony offenders received active sentences in FY 2011-12; 58% received intermediate sentences. Since both Class G and Class I felonies require nine months of post-release supervision, there will be no additional cost to community corrections for individuals receiving active sentences. The average lengths of intermediate punishment imposed for Class G offenses was 31 months. The average lengths of intermediate and community punishment imposed for Class I offenses were 26 and 22 months respectively. For every individual convicted of a Class G felony who receives an intermediate sentence, it will cost community corrections between $545, the difference between the current Class I intermediate sentence cost and the new Class G offense cost ($3,376 minus $2,831) and $980, the difference between the current Class I community sentence cost and the new Class G offense cost ($3,376 minus $2,396).

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

[3] Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

[4] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:

Maggie Morrissey
Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 30, 2014

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 292
PROPOSED COMMITTEE SUBSTITUTE S292-CSRK-15 [v.4]

5/3/2013 2:49:09 PM

Short Title: Immediate License Revocation for Refusal. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WHERE A PERSON HAS COMMITTED AN IMPLIED-CONSENT OFFENSE, AND APPLICABLE LAW REQUIRES A MANDATORY REVOCATION OF THE PERSON'S DRIVER'S LICENSE, A REQUEST FOR A HEARING DOES NOT STAY THE REVOCATION PERIOD, WHICH SHALL BE IMMEDIATELY IMPOSED UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.2(d) reads as rewritten:

"(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation ~~order unless, before the effective date of the order, the person requests in writing a hearing before the Division.~~order. The person may request in writing a hearing before the Division to contest the revocation, but the request shall not stay the revocation of the person's license to drive if either of the following apply: (i) the matter is heard by a judicial official pursuant to the procedures in G.S. 20-16.5(e), and the judicial official determines that there is probable cause to believe that the conditions of G.S. 20-16.5(b)(1) through (3), and G.S. 20-16.5(b)(4)a. have been met, or (ii) the matter is presented to a clerk pursuant to the procedures in G.S. 20-16.5(f), and the clerk determines that there is probable cause to believe that the conditions of G.S. 20-16.5(b)(1) through (3), and G.S. 20-16.5(b)(4)a. have been met. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. ~~If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing.~~

Prior to a requested hearing, ~~The~~ the hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses

appearing at the hearing. The hearing shall be conducted in the county where the charge was brought, and shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis.

If the Division finds that the conditions specified in this subsection are met, it shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. ~~If the revocation is sustained, the person shall surrender his or her license immediately upon notification by the Division.~~"

SECTION 2. This act becomes effective September 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 292:
Immediate License Revocation for Refusal

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2013
Introduced by:	Sens. Brunstetter, Rabon	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	PCS to First Edition S292-CSRK-15		

SUMMARY: ***This act amends the statutes to provide that upon a person's receipt of a notice of revocation of their driver's license, a request for a hearing does not stay the revocation period.***

CURRENT LAW: There are two different revocation statutes dealing with a refusal to submit to an analysis. General Statute 20-16.2 is "administrative," in that it is processed through the Department of Motor Vehicles and is a 12 month revocation for refusal to submit to the analysis. General Statute 20-16.5 is deemed to be an "immediate" revocation [which it may or may not be], and is a "civil" proceeding through a judicial official or clerk of court, if filed with the clerk.

I. Administrative, 12 month revocation

General Statute 20-16.2 provides:

"**Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied consent offense.** Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied consent offense may obtain a chemical analysis of the person." [emphasis added]

The law provides that when a driver is suspected of an implied consent offense (one where a chemical analysis is required), and then refuses the chemical analysis, the law enforcement officer can provide an affidavit to the Department of Motor Vehicles that states any of the following:

- The person refused the analysis.
- The person took the analysis and had a reading of 0.15.
- The person's driver's license had an alcohol restriction and the results established a violation of that restriction.

Although the affidavit is stated to include a reading over 0.15, the specific statements of what should be included in the affidavit do not include a statement to that effect.

The law then provides that if an affidavit is submitted to the DMV as provided in the section, then the DMV will send a notice of revocation to the person that the driver's license is revoked for 12 months, effective on the 10th day after mailing. **However, if the person asks for a hearing, the revocation period is stayed.** According to the statute, the ultimate issue to be determined at the hearing is whether the person willfully refused to submit to an analysis. If the person had turned in the license prior to the hearing, they are credited with that time period; however, they are not credited with the time period provided in the civil revocation proceeding under G.S. 20-16.5.

II. Civil Proceeding, 30 or 45 day revocation period

There are four bases for revocation under this statute:

- Willful refusal of a chemical analysis
- Alcohol concentration of 0.08 or more (regular license)
- Alcohol concentration of 0.04 or more (commercial license)
- Any alcohol concentration, person is under 21 years of age

The law enforcement officer and chemical analyst execute a revocation report. If there has been a refusal and an affidavit completed under 20-16.2, then that affidavit may be used. If no revocation report has been filed, a judicial official conducting the initial appearance on the underlying criminal charge would review it with the person present. Upon finding probably cause as to the required elements (reasonable grounds that an implied consent defense committed; the statutory procedures were followed for notification and submission; and person falls into one of the four above categories), there is an "immediate" revocation of the license. The driver is required to turn over the license at that time, and it is revoked for 30 days.

If the revocation report if filed before the clerk, and the person is not present, then the clerk can find probable cause, and mail a revocation order to the person. The person can surrender the license to the clerk or demonstrate that he or she is not currently licensed. If the person does not respond within five working days of the effective date of the order, then a "pick-up" order is issued. The revocation is for 30 days from the surrender date, or 45 days is the license is surrendered more than five days after the effective date of the order, or is the result of a "pick-up" order.

BILL ANALYSIS:

The bill provides that if a person has their license administratively revoked under G.S. 20-16.2, the revocation period is not stayed by a request for a hearing if the person has had a civil proceeding under G.S. 20-16.5, and the judicial official or the clerk found that there was probable cause that the person had willfully refused to submit to a chemical analysis.

EFFECTIVE DATE: This act becomes effective September 1, 2013, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: Senate Bill 292 (First Edition)

SHORT TITLE: Immediate License Revocation for Refusal.

SPONSOR(S): Senators Brunstetter and Rabon

FISCAL IMPACT

($ in thousands)

☑ Yes ☐ No ☐ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Highway Fund Revenues:	0.0	0.0	0.0	0.0	0.0
Highway Fund Expenditures:	155.7	0.0	0.0	0.0	0.0
State Positions:	0.0	0.0	0.0	0.0	0.0
NET STATE IMPACT	($155.7)	$0.0	$0.0	$0.0	$0.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
DOT Information Technology - State Automated Driver License System

EFFECTIVE DATE: September 1, 2013

TECHNICAL CONSIDERATIONS:
None

BILL SUMMARY: Amends G.S. 20-16.2(d) to remove the requirement that the Division of Motor Vehicles (DMV) stay a pending license revocation due to receipt of a hearing request prior to the effective date of a revocation order resulting from an implied consent offense.

ASSUMPTIONS AND METHODOLOGY: Currently, license suspensions for refusals to subject to chemical analysis become effective ten calendar days following the mailing of the revocation order. However, if a driver requests a preliminary hearing prior to the effective date, the suspension is stayed pending the outcome of the hearing. During calendar year 2012, DMV reports a total of 6,410 revocations for refusal to submit to chemical analysis, with a total of 1,416 pre-hearings. Suspensions were sustained in 61% of the reported the pre-hearings.

S.B. 292 modifies this process by removing the authorization for a pre-hearing to potentially stay the suspension, thereby requiring immediate suspension. However, a driver may still request a hearing on the suspension. Fiscal Research cannot estimate the potential impact on hearing requests, in lieu of pre-hearings, due to this procedural change. However, given current pre-hearing levels, the Division of Motor Vehicles does not expect to incur additional costs due to variance in the number of resultant hearings.

Modifications to the State Automated Driver License System (SADLS) and Next Generation Secure Driver License System (NGSDLS) are necessary to effect this procedural change and to adjust linked processes (e.g. conviction, correspondence, suspension, hearing, and limited driving privilege). In addition to developing and testing new program rules for offenses committed on or after September 1, 2013, existing processes must be maintained for earlier offenses. The DOT Information Technology Section (DOT-IT) projects a combined total of 1,500 labor hours and estimated development cost of $155,740 to make these changes. However, it is unclear whether a portion of the modification costs could be offset with a service credit from the NGSDLS vendor.

Further, a "code freeze" has been declared on all certification-related programs to accommodate NGSDLS development and implementation, effective until the end of the project. Consequently, DOT-IT does not anticipate completion of these modifications by the proposed effective date; however, DOT-IT could not provide an estimate for an alternate effective date, given resource availability and the NGSDLS project status.

SOURCES OF DATA: Division of Motor Vehicles; DOT Information Technology Section

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 1, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 465

Short Title:	Prohibit Use of Tax Zapper Software.	(Public)
Sponsors:	Senators McKissick, Brown, Daniel (Primary Sponsors); Brock, Clark, Cook, and Jackson.	
Referred to:	Judiciary II.	

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO SELL, PURCHASE, INSTALL, POSSESS, TRANSFER, USE, OR ACCESS AN AUTOMATED SALES SUPPRESSION DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 20 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-118.7. Possession, transfer, or use of automated sales suppression device.**

(a) Definitions. – The following definitions apply in this section:

(1) Automated sales suppression device or zapper. – A software program that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including transaction data and transaction reports. The term includes the software program, any device that carries the software program, or an Internet link to the software program.

(2) Electronic cash register. – A device that keeps a register or supporting documents through the use of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner.

(3) Phantom-ware. – A hidden programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a second set of records or may eliminate or manipulate transaction records, which may or may not be preserved in digital formats, to represent the true or manipulated record of transactions in the electronic cash register.

(4) Transaction data. – The term includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(5) Transaction report. – A report that documents, but is not limited to documenting, the sales, taxes, or fees collected, media totals, and discount voids at an electronic cash register and that is printed on cash register tape at the end of a day or shift, or a report that documents every action at an electronic cash register and that is stored electronically.

(b) Offense. – No person shall knowingly sell, purchase, install, transfer, possess, use, or access any automated sales suppression device, zapper, or phantom-ware.

(c) Penalty. – Any person convicted of a violation of this section is guilty of a Class H felony.

(d) Liability. – Any person who violates this section is liable for all taxes, fees, penalties, and interest due the State as the result of the use of an automated sales suppression device, zapper, or phantom-ware and shall forfeit to the State as an additional penalty all profits associated with the sale or use of an automated sales suppression device, zapper, or phantom-ware.

(e) Contraband. – An automated sales suppression device, zapper, or phantom-ware, or any device containing such device or software, is contraband."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 465:
Prohibit Use of Tax Zapper Software

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2013
Introduced by:	Sens. McKissick, Brown, Daniel	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 465 would make it a Class H felony to knowingly sell, purchase, install, or use an automated sales suppression device or "zapper" to falsify electronic cash register records.

CURRENT LAW: Pursuant to G.S. 105-236(a)(7), *"Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony."*

BILL ANALYSIS: Senate Bill 465 would make it a Class H felony to knowingly sell, purchase, install, or use an automated sales suppression device or "zapper" to falsify electronic cash register records records. The bill declares such devices, which are generally used for the purpose of tax evasion, to be contraband, and all profits associated with the sale or use of the device would be subject to forfeiture. A person guilty of the offense would also be liable for all taxes, fees, penalties, and interest due the State.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

BACKGROUND: A "zapper" is a software program, often run untraceably from a USB flash drive, that accesses point of sale system records and allows the owner of a business to alter the records so as to make it credibly appear that fewer transactions have occurred than has actually been the case. This reduces the tax burden on the business, which is generally proportional to the volume of the transactions.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 59
PROPOSED COMMITTEE SUBSTITUTE S59-CSML-7 [v.9]

5/6/2013 1:43:56 PM

Short Title: School Security Enhancements. (Public)

Sponsors:

Referred to:

February 6, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW A COUNTY, IN CONSULTATION WITH THE COUNTY SHERIFF'S OFFICE AND CERTAIN OTHER PARTIES, TO ENTER INTO AN AGREEMENT WITH A LOCAL BOARD OF EDUCATION TO ESTABLISH A SCHOOL SECURITY OFFICER PROGRAM; TO PROVIDE THAT THE NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION SHALL DEVELOP A SCHOOL SECURITY TRAINING COURSE TO BE ADMINISTERED BY THE VARIOUS COUNTY SHERIFF'S OFFICES; TO ALLOW SCHOOL SECURITY OFFICERS TO CARRY A HANDGUN ON EDUCATIONAL PROPERTY WHILE ON OFFICIAL DUTY; AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-212.3. School security officer program.**

(a) Creation. – A county, in consultation with the county sheriff's office and any other party the county deems appropriate, may enter into a memorandum of understanding with any local board of education located within that county to establish a school security officer program to provide school security officers in public schools.

(b) Eligibility. – To be eligible for the program, a person must (i) meet the minimum selection standards set for justice officers by the North Carolina Sheriffs' Education and Training Standards Commission in 12 NCAC 10B.0301 and (ii) successfully complete the school security training course developed by the North Carolina Sheriffs' Education and Training Standards Commission pursuant to G.S. 17E-4(a)(13) and administered by the appropriate county sheriff's office. In order to maintain eligibility in this program, a person must successfully complete the school security training course every six months. A preference shall be given to certified law enforcement officers who apply to serve as a school security officer and the standards met and training received by the certified law enforcement officer shall satisfy the requirements of this subsection.

(c) Program Criteria. – The program established pursuant to this section shall include the following:

(1) A procedure for applying to serve as a school security officer.

(2) A procedure for assigning school security officers to a school.

(3) A standard operating procedure to be followed by all school security officers providing security to a school, including the development of a

communications process for a school security officer to utilize in communicating with outside law enforcement and rescue personnel.

(4) An identification of the type of uniform that must be worn by the school security officer to allow others to quickly identify the person as a school security officer.

(5) An identification of the type of equipment that a school security officer must utilize to successfully discharge his or her duties.

(6) Any other criteria the parties identified in subsection (a) deem appropriate or relevant.

(d) Uniform and Equipment. – The county shall provide a school security officer with a uniform and any equipment the county deems necessary for providing security at a school, including a means of communicating with outside law enforcement or rescue personnel.

(e) Liability. – There shall be no liability on the part of, and no cause of action shall arise against, a school security officer, the county board of commissioners, the Sheriff or employees of the county sheriff's office, the local board of education or any of its employees, or any other party involved in the establishment of the school security officer program pursuant to this section, for any good faith action taken by them in the performance of their duties with regard to the school security officer program."

SECTION 2. G.S. 115C-47 is amended by adding a new subdivision to read:

"**§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

(61) To Provide a Safe School Environment. – Local boards of education may, pursuant to G.S. 153A-212.3, enter into a memorandum of understanding with the county in which the local school administrative unit is located to provide a school security officer at all elementary, middle, and high schools."

SECTION 3. G.S. 17E-4(a) is amended by adding a new subdivision to read:

"**§ 17E-4. Powers and duties of the Commission.**

(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

...

(13) Develop a school security training course for the county sheriff's office to administer pursuant to G.S. 153A-212.3. The course shall include the following:

a. Firearms and safety training, including the use of firearms in an emergency or crisis situation involving the actual firing of firearms where unarmed bystanders are involved.

b. Training on how to provide assistance to students with disabilities during an emergency or crisis situation.

c. Any other training the Commission deems necessary for a school security officer to possess in order to successfully respond to an emergency or crisis situation in a school.

...."

SECTION 4. G.S. 14-269.2(a) reads as rewritten:

"(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.

(1c) School security officer. – A person providing security to a school pursuant to G.S. 153A-212.3.

(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."

SECTION 5. G.S. 14-269.2(g) is amended by adding a new subdivision to read:

"(g) This section shall not apply to any of the following:

...

(7) A school security officer providing security at a school pursuant to G.S. 153A-212.3, provided that the school security officer is acting in the discharge of the person's official duties and is on the premises of the school to which the person is assigned as a school security officer."

SECTION 6. G.S. 14-415.11(c) reads as rewritten:

"(c) Except as provided in G.S. 14-415.27, a permit does not authorize a person to carry a concealed handgun in any of the following:

(1) Areas prohibited by ~~G.S. 14-269.2, 14-269.3, and 14-277.2.~~G.S. 14-269.2, except as allowed under G.S. 14-269.2(g).

(1a) Areas prohibited by G.S. 14-269.3 and G.S. 14-277.2.

(2) Areas prohibited by G.S. 14-269.4, except as allowed under G.S. 14-269.4(6).

(3) In an area prohibited by rule adopted under G.S. 120-32.1.

(4) In any area prohibited by 18 U.S.C. § 922 or any other federal law.

(5) In a law enforcement or correctional facility.

(6) In a building housing only State or federal offices.

(7) In an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government.

(8) On any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises."

SECTION 7. G.S. 1-538.3(d) reads as rewritten:

"(d) For purposes of this section, the term "educational property" has the same definition as in ~~G.S. 14-269.2(a)(1),~~G.S. 14-269.2, and the term "educational entity" means the board of education or other entity that administers and controls the educational property or the school-sponsored activity."

SECTION 8. G.S. 14-69.1(c) reads as rewritten:

"(c) Any person who, by any means of communication to any person or groups of persons, makes a report, knowing or having reason to know the report is false, that there is located in or in sufficient proximity to cause damage to any public building any device designed to destroy or damage the public building by explosion, blasting, or burning, is guilty of a Class H felony. Any person who receives a second conviction for a violation of this subsection within five years of the first conviction for violation of this subsection is guilty of a

Class G felony. For purposes of this subsection, "public building" means educational property as defined in ~~G.S. 14-269.2(a)(1),~~G.S. 14-269.2, a hospital as defined in G.S. 131E-76(3), a building housing only State, federal, or local government offices, or the offices of State, federal, or local government located in a building that is not exclusively occupied by the State, federal, or local government."

SECTION 9. G.S. 14-69.2(c) reads as rewritten:

"(c) Any person who, with intent to perpetrate a hoax, conceals, places, or displays in or at a public building any device, machine, instrument, or artifact, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property is guilty of a Class H felony. Any person who receives a second conviction for a violation of this subsection within five years of the first conviction for violation of this subsection is guilty of a Class G felony. For purposes of this subsection "public building" means educational property as defined in ~~G.S. 14-269.2(a)(1),~~G.S. 14-269.2, a hospital as defined in G.S. 131E-76(3), a building housing only State, federal, or local government offices, or the offices of State, federal, or local government located in a building that is not exclusively occupied by the State, federal, or local government."

SECTION 10. G.S. 115C-238.29E(d) reads as rewritten:

"(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures. For purposes of security, the board of directors of the charter school may provide a school security officer at the school, subject to the selection and training requirements set out in G.S. 153A-212.3."

SECTION 11. G.S. 115C-238.66 reads as rewritten:

"**§ 115C-238.66. Board of directors; powers and duties.**

The board of directors shall have the following powers and duties:

...

(7) Health and safety. – The board of directors shall require that the regional school meet the same health and safety standards required of a local school administrative unit. For purposes of security, the board of directors may provide a school security officer at the regional school, subject to the selection and training requirements set out in G.S. 153A-212.3."

...."

SECTION 12. G.S. 115C-548 reads as rewritten:

"**§ 115C-548. Attendance; health and safety regulations.**

Each private church school or school of religious charter shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance so long as the school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law. For purposes of security, each school may provide a school security officer, subject to the selection and training requirements set out in G.S. 153A-212.3."

...."

SECTION 13. G.S. 115C-556 reads as rewritten:

"**§ 115C-556. Attendance; health and safety regulations.**

Each qualified nonpublic school shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance so long as the school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of

the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law. For purposes of security, each school may provide a school security officer, subject to the selection and training requirements set out in G.S. 153A-212.3."

...."

SECTION 14. This act becomes effective December 1, 2013.

SENATE BILL 59:
Armed Security Guards in K-12

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2013
Introduced by:	Sen. Rabin	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	PCS to First Edition S59-CSML-7		

SUMMARY: ***This act provides that counties may establish a school security officer program in public schools, and authorizes nonpublic schools to have a security officer program in accordance with State law. This act becomes effective December 1, 2013.***

BILL ANALYSIS:

Section 1

- Authorizes counties, in consultation with the county sheriff's office and any other party the county deems relevant, to enter into a memorandum of understanding (MOU) with the local school boards to establish a school security officer program to provide school security officers in public schools.
- To be eligible to serve as a school security officer, a person must
  - Meet the minimum selection standards set for justice officers by the NC Sheriffs' Education and Training Standards Commission, and
  - Successfully complete the school security training course established by the NC Sheriffs' Education and Training Standards Commission and administered by the appropriate county sheriff's office.

  A person serving as a school security officer must successfully complete the training course every six months to continue serving as a school security officer. A preference is given to certified law enforcement officers, and the standards met and training received by said officers would satisfy the eligibility requirements for the program.
- The course developed by the NC Sheriffs' Education and Training Standards Commission would be tailored to provide training for school security situations.
- Program criteria include:
  - A procedure for applying to serve as a school security officer.
  - A procedure for assigning school security officers to schools.
  - Developing a standard operating procedure for school security officers, including a communications process for a school security officer to utilize for communicating with outside law enforcement or rescue personnel.
  - Identifying the type of uniform that must be worn by the school security officer to allow others to quickly identify the person as such.
  - Identifying the type of equipment that must be utilized by a school security officer.

- A catch-all that allows the county and the other interested parties to include anything they deem appropriate or relevant.

- The county shall provide the necessary uniform and equipment to a person serving as a school security officer.
- There shall be no liability for any good faith action taken in the performance of duties.

Section 2 -- Provides that local boards of education have the power to enter into MOUs with the counties to establish a school security officer program.

Section 3 -- Directs the NC Sheriffs' Education and Training Standards Commission to develop a school security training course to be administered by the various county sheriff's offices. The course shall include:

- Firearms and safety training, including the use of firearms in an emergency or crisis situation involving the actual firing of firearms where unarmed bystanders are involved.
- Training on how to provide assistance to students with disabilities during an emergency or crisis situation.
- A catch-all that allows the Commission to include any other training it deems necessary for a school security officer to possess in order to successfully respond to an emergency or crisis situation in a school.

Sections 4-5 -- Allows a school security officer to carry a handgun on the grounds of the school he or she is assigned to while acting in the discharge of his or her duties.

Sections 6-9 -- These are conforming changes due to the inclusion of Sections 4-5.

Sections 10-13 -- Provides that other types of schools (i.e., charter, regional, religious, private) may provide a school security officer in accordance with the requirements of the new G.S. 153A-212.3.

EFFECTIVE DATE: This act becomes effective December 1, 2013.

Luke Gillenwater, Bill Drafting Division, substantially contributed to this summary.

S59-smrk-71(csml-7)

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 5-7 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Brandon O'Dell	Spring Lake ~~[redacted]~~	Babin
2. Evan McDow	Albemarle	McLaurin
3. Chad Lee	Greensboro	Robinson
4. John Easterling	Laurinburg	McLaurin
5. Donald Kendle	Burlington	~~McLaurin~~ ~~Taylor~~ Berger
6.		
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 05/07/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate JII Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jonathan Barbaker	Barbaker & Assoc.
Bill Rowe	NC Justice Center
Stephanie Hawco	WPTF
Leon Wilson	NCSBA
JOE LANIER	NELSON MULLINS

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

May 7, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susan Lacka	Nursery Prod.
Tom Dixon	NCDOR
Sara Perdue	NC SPAC
Monika Hostlee	NCCJA
Alex Badger	CSS
Dustin Hale	Sen. Brown
William MacRae	NC Private Protective Services Board.
Gregg Stahl	NC Sheriffs' Assoc.
Rosita Lutterloh	Sen. McKissick's Office
Ken Melton	K. M. A.
Sheri Agno	DOJ

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

May 7, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Annaliese Dolph	Dolph Law
Ann Rodriguez	NC Council of Community Programs
Dan Coughlin	" " " "
Sarah Rothacker	Burland Assoc
Kerry McManus	AB2013
Bill James	NORTHERN HOSPITAL

VISITOR REGISTRATION SHEET

Senate JII Committee
Name of Committee

May 7, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ken Gattis	DPI
LARRY ISAACS	Revival Academy. Private School
Todd Barlow	NC Advocates for Justice
Adam Pridemore	NCASA
[signature]	NCRMA
Penny Hauffe	School of Gov.
JAY PETERS	CSS
[signature]	KIG
Thomas Caves	NC SBI
KRIS HORTON	DMHS
Amanda Honaker	Troutman Sanders
[signature]	[illegible]

Senate Committee on Judiciary II
Thursday, May 9, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 292	Immediate License Revocation for Refusal.	Senator Brunstetter Senator Rabon
SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 553	LME/MCO Enrollee Grievances & Appeals.	Senator Hise
SB 636	Wildlife Resources Comm. Penalty Changes.	Senator Newton
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

Adjournment

Senate Judiciary II Committee
Thursday, May 9, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, May 9, 2013 in room 1124 of the Legislative Building. Trey Penland of Burnsville, Kristin Marrow of Roper, Gabbie Holmes of Sanford, Olivia de Araujo of Goldsboro, and John Easterling of Laurinburg served as pages. Senator Allran presided as chair.

S.B. 292 - Immediate License Revocation for Refusal

Senator Rabon and Hal Pell, a staff attorney with the Research Division, were recognized to explain the bill and answer questions. Senator Tucker moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would amend the statutes to provide that upon a person's receipt of a notice of revocation of their driver's license, a request for a hearing does not stay the revocation period, and provides for a limited driving privilege under certain circumstances. Senator Rabon voiced opposition to the new PCS. Senator Tucker moved to amend the PCS to remove Section 2. which allows limited driving privileges. Lori Kroll, Senator Brunstetter's general counsel, was recognized to answer questions. Senator Tucker moved to adopt the amendment and the motion carried. Senator Cook moved for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal note, and the amendment is attached.

S.B. 409 – Amend Civil No Contact Laws/Stalking

Senator Tarte was recognized to explain the bill and Senator Bingham moved to adopt the PCS for discussion. The motion carried. The PCS would allow courts to access attorneys' fees, and costs against the plaintiff for filing or service of false harassment complaints under certain conditions. It would also amend the procedure for the setting of hearings. Senator Davis moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 553 – LEM/MCO Enrollee Grievances & Appeals

Senator Hise was recognized to explain the bill which would establish a Local Management Entity/Managed Care Organization process for enrollee grievances and appeals of managed care actions. Brenda Carter, a staff attorney with the Research Division, was recognized to answer questions. Senator Bingham moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 636 – Wildlife Resources Comm. Penalty Changes

Senator Daniel and Senator Newton were recognized to explain the bill. Senator Randleman moved to adopt the PCS for discussion and the motion carried. Ms. Carter explained that the PCS would amend penalties for various violations of boating safety and hunting laws and related rules adopted by the Wildlife Resources Commission (WRC). Gordon Meyers, Executive Director of the WRC, was recognized to further explain the PCS and answer questions. Major Chris Huber, WRC, was recognized to answer questions. Senator Daniel

moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal note is attached.

S.B. 676 – 10 Yr. Min for 2nd Gun Felony Conviction

Due to time limitations, this bill was not heard.

The meeting adjourned at 11:01 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

Corrected #2: S174 - Disapprove Industrial Commission Rules has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 9, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 292	Immediate License Revocation for Refusal.	Senator Brunstetter Senator Rabon
SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 553	LME/MCO Enrollee Grievances & Appeals.	Senator Hise
SB 636	Wildlife Resources Comm. Penalty Changes.	Senator Newton
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected #1: S174 - Disapprove Industrial Commission Rules has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 9, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 174	Disapprove Industrial Commission Rules.	Senator Brown
SB 292	Immediate License Revocation for Refusal.	Senator Brunstetter Senator Rabon
SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 553	LME/MCO Enrollee Grievances & Appeals.	Senator Hise
SB 636	Wildlife Resources Comm. Penalty Changes.	Senator Newton
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 9, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
SB 292	Immediate License Revocation for Refusal.	Senator Brunstetter Senator Rabon
SB 409	Amend Civil No-Contact Laws/Stalking.	Senator Tarte
SB 553	LME/MCO Enrollee Grievances & Appeals.	Senator Hise
SB 636	Wildlife Resources Comm. Penalty Changes.	Senator Newton
SB 676	10 Yr. Min for 2nd Gun Felony Conviction.	Senator Daniel

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, May 13, 2013

Senator Allran,
submits the following with recommendations as to passage:

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

SB **292** Immediate License Revocation for Refusal.
Draft Number: S292-PCS85221-RK-15
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

SB **409** Amend Civil No-Contact Laws/Stalking.
Draft Number: S409-PCS85222-RK-38
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

SB **636** Wildlife Resources Comm. Penalty Changes.
Draft Number: S636-PCS95086-RV-31
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

SB **676** 10 Yr. Min for 2nd Gun Felony Conviction.
Draft Number: S676-PCS85224-RV-19
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Senator Peter Brunstetter will handle SB 292
Senator Jeffery Tarte will handle SB 409
Senator E.S. Newton will handle SB 636
Senator Warren Daniel will handle SB 676

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, May 09, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

SB **553** **(CS#1)** LME/MCO Enrollee Grievances & Appeals.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Ralph Hise will handle SB 553

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 292
PROPOSED COMMITTEE SUBSTITUTE S292-CSRK-15 [v.10]

5/8/2013 5:54:56 PM

Short Title: Immediate License Revocation for Refusal. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WHERE A PERSON HAS COMMITTED AN IMPLIED-CONSENT OFFENSE AND APPLICABLE LAW REQUIRES A MANDATORY REVOCATION OF THE PERSON'S DRIVER'S LICENSE, A REQUEST FOR A HEARING DOES NOT STAY THE REVOCATION PERIOD, WHICH SHALL BE IMMEDIATELY IMPOSED UNDER CERTAIN CIRCUMSTANCES, AND TO PROVIDE FOR A LIMITED DRIVING PRIVILEGE UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.2(d) reads as rewritten:

"(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation ~~order unless, before the effective date of the order, the person requests in writing a hearing before the Division.~~order. The person may request in writing a hearing before the Division to contest the revocation, but the request shall not stay the revocation of the person's license to drive if either of the following apply: (i) the matter is heard by a judicial official pursuant to the procedures in G.S. 20-16.5(e), and the judicial official determines that there is probable cause to believe that the conditions of G.S. 20-16.5(b)(1) through (3), and G.S. 20-16.5(b)(4)a. have been met, or (ii) the matter is presented to a clerk pursuant to the procedures in G.S. 20-16.5(f), and the clerk determines that there is probable cause to believe that the conditions of G.S. 20-16.5(b)(1) through (3), and G.S. 20-16.5(b)(4)a. have been met. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. ~~If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing.~~

Prior to a requested hearing, ~~The~~ the hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the

authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing shall be conducted in the county where the charge was brought, and shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis.

If the Division finds that the conditions specified in this subsection are met, it shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. ~~If the revocation is sustained, the person shall surrender his or her license immediately upon notification by the Division.~~"

SECTION 2. G.S. 20-16.2 is amended by adding a new subsection to read:

"(e2) Limited Driving Privilege after Civil Revocation. -- A person whose driver's license has been revoked under this section, and who received a limited driving privilege pursuant to G.S. 20-16.5(p), is eligible to receive a limited driving privilege if both of the following conditions are met:

(1) The person qualifies under subdivisions (2), (3), (4), and (6) of subsection (e1) of this section.

(2) The person is participating in any recommended training or treatment, as provided in G.S. 20-16.5(p)(4), or has completed such training or treatment.

A notice of revocation sent by the Department under this section shall include a statement that if the person received a limited driving privilege by a judge pursuant to G.S. 20-16.5 for the refusal, the person may be eligible for a limited driving privilege, and that the person may contact the Department for application information. Upon the person's application, and the Department's verification that the person qualifies under subdivisions (1) and (2) of this subsection, the person shall be granted a limited driving privilege. The conditions and restrictions imposed pursuant to G.S. 20-179.3 on the limited driving privilege granted pursuant to G.S. 20-16.5(p) shall be included in the limited driving privilege under this subsection.

The limited driving privilege issued pursuant to this subdivision shall expire six months from the beginning of the revocation period, or under such other circumstances upon which a limited driving privilege would be terminated by operation of law or judicial order. Upon the expiration of the limited driving privilege issued pursuant to this subsection, the person may apply for a limited driving privilege pursuant to subsection (e1) of this section."

SECTION 3. This act becomes effective September 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 292:
Immediate License Revocation for Refusal

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2013
Introduced by:	Sens. Brunstetter, Rabon	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S292-CSRK-15		Committee Counsel

SUMMARY: ***This act amends the statutes to provide that upon a person's receipt of a notice of revocation of their driver's license, a request for a hearing does not stay the revocation period, and provides for a limited driving privilege under certain circumstances. This act becomes effective September 1, 2013.***

CURRENT LAW: There are two different revocation statutes dealing with a refusal to submit to an analysis. General Statute 20-16.2 is "administrative," in that it is processed through the Department of Motor Vehicles and is a 12 month revocation for refusal to submit to the analysis. General Statute 20-16.5 is deemed to be an "immediate" revocation [which it may or may not be], and is a "civil" proceeding through a judicial official or clerk of court.

I. Administrative, 12 month revocation/limited driving privilege

General Statute 20-16.2 provides:

"**Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied consent offense.** Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied consent offense may obtain a chemical analysis of the person." [emphasis added]

The law provides that when a driver is suspected of an implied consent offense (one where a chemical analysis is required), and then refuses the chemical analysis, the law enforcement officer can provide an affidavit to the Department of Motor Vehicles that states any of the following:

- The person refused the analysis.
- The person took the analysis and had a reading of 0.15.
- The person's driver's license had an alcohol restriction and the results established a violation of that restriction.

Although the affidavit is stated to include a reading over 0.15, the specific statements of what should be included in the affidavit do not include a statement to that effect.

The law then provides that if an affidavit is submitted to the DMV as provided in the section, then the DMV will send a notice of revocation to the person that the driver's license is revoked for 12 months, effective on the 10th day after mailing. **However, if the person asks for a hearing, the revocation period is stayed.** According to the statute, the ultimate issue to be determined at the hearing is whether the person willfully refused to submit to an analysis. If the person had turned in the license prior to the hearing, they are credited with that time period; however, they are not credited with the time period provided in the civil revocation proceeding under G.S. 20-16.5.

A person whose license has been revoked administratively can obtain a limited driving privilege after six months of revocation, and if other requirements have been met.

II. Civil Proceeding, 30 or 45 day revocation period/limited driving privilege

There are four bases for revocation under this statute:

- Willful refusal of a chemical analysis
- Alcohol concentration of 0.08 or more (regular license)
- Alcohol concentration of 0.04 or more (commercial license)
- Any alcohol concentration, person is under 21 years of age

The law enforcement officer and chemical analyst execute a revocation report. If there has been a refusal and an affidavit completed under 20-16.2, then that affidavit may be used. If no revocation report has been filed, a judicial official conducting the initial appearance on the underlying criminal charge would review it with the person present. Upon finding probably cause as to the required elements (reasonable grounds that an implied consent defense committed; the statutory procedures were followed for notification and submission; and person falls into one of the four above categories), there is an "immediate" revocation of the license. The driver is required to turn over the license at that time, and it is revoked for 30 days.

If the revocation report if filed before the clerk, and the person is not present, then the clerk can find probable cause, and mail a revocation order to the person. The person can surrender the license to the clerk or demonstrate that he or she is not currently licensed. If the person does not respond within five working days of the effective date of the order, then a "pick-up" order is issued. The revocation is for 30 days from the surrender date, or 45 days is the license is surrendered more than five days after the effective date of the order, or is the result of a "pick-up" order.

If the person's license is revoked for 30 days, a limited driving privilege can be granted after 10 days revocation. If revoked for 45 days, then a limited driving privilege can be granted after 30 days.

BILL ANALYSIS: The act provides that:

- If a person has their license administratively revoked under G.S. 20-16.2, the revocation period is not stayed by a request for a hearing if the person has had a civil proceeding under G.S. 20-16.5, and the judicial official or the clerk found that there was probable cause that the person had willfully refused to submit to a chemical analysis.
- If the person received a limited driving privilege during the revocation imposed by a judge under G.S. 20-16.5, then the person is eligible for a limited driving privilege for a six month period (and does not have to wait six months to apply for the limited driving privilege).

EFFECTIVE DATE: This act becomes effective September 1, 2013, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: Senate Bill 292 (First Edition)

SHORT TITLE: Immediate License Revocation for Refusal.

SPONSOR(S): Senators Brunstetter and Rabon

FISCAL IMPACT

($ in thousands)

☑ Yes ☐ No ☐ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Highway Fund Revenues:	0.0	0.0	0.0	0.0	0.0
Highway Fund Expenditures:	155.7	0.0	0.0	0.0	0.0
State Positions:	0.0	0.0	0.0	0.0	0.0
NET STATE IMPACT	($155.7)	$0.0	$0.0	$0.0	$0.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
DOT Information Technology - State Automated Driver License System

EFFECTIVE DATE: September 1, 2013

TECHNICAL CONSIDERATIONS:
None

BILL SUMMARY: Amends G.S. 20-16.2(d) to remove the requirement that the Division of Motor Vehicles (DMV) stay a pending license revocation due to receipt of a hearing request prior to the effective date of a revocation order resulting from an implied consent offense.

ASSUMPTIONS AND METHODOLOGY: Currently, license suspensions for refusals to subject to chemical analysis become effective ten calendar days following the mailing of the revocation order. However, if a driver requests a preliminary hearing prior to the effective date, the suspension is stayed pending the outcome of the hearing. During calendar year 2012, DMV reports a total of 6,410 revocations for refusal to submit to chemical analysis, with a total of 1,416 pre-hearings. Suspensions were sustained in 61% of the reported the pre-hearings.

S.B. 292 modifies this process by removing the authorization for a pre-hearing to potentially stay the suspension, thereby requiring immediate suspension. However, a driver may still request a hearing on the suspension. Fiscal Research cannot estimate the potential impact on hearing requests, in lieu of pre-hearings, due to this procedural change. However, given current pre-hearing levels, the Division of Motor Vehicles does not expect to incur additional costs due to variance in the number of resultant hearings.

Modifications to the State Automated Driver License System (SADLS) and Next Generation Secure Driver License System (NGSDLS) are necessary to effect this procedural change and to adjust linked processes (e.g. conviction, correspondence, suspension, hearing, and limited driving privilege). In addition to developing and testing new program rules for offenses committed on or after September 1, 2013, existing processes must be maintained for earlier offenses. The DOT Information Technology Section (DOT-IT) projects a combined total of 1,500 labor hours and estimated development cost of $155,740 to make these changes. However, it is unclear whether a portion of the modification costs could be offset with a service credit from the NGSDLS vendor.

Further, a "code freeze" has been declared on all certification-related programs to accommodate NGSDLS development and implementation, effective until the end of the project. Consequently, DOT-IT does not anticipate completion of these modifications by the proposed effective date; however, DOT-IT could not provide an estimate for an alternate effective date, given resource availability and the NGSDLS project status.

SOURCES OF DATA: Division of Motor Vehicles; DOT Information Technology Section

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 1, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 409
PROPOSED COMMITTEE SUBSTITUTE S409-CSRK-38 [v.6]
5/6/2013 2:28:54 PM

Short Title: Amend Civil No-Contact Laws. (Public)

Sponsors:

Referred to:

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND PROCEDURES AND TO PROVIDE FOR COSTS AND ATTORNEYS FEES IN CIVIL NO-CONTACT ORDER CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-2(b) reads as rewritten:

"(b) No court costs shall be assessed against the plaintiff for the filing or service of the complaint, or the service of any ~~orders.~~orders, and no attorneys' fees shall be assessed against the plaintiff, unless prior to assessing any costs or attorneys' fees, the court finds from evidence presented to the court that the plaintiff (i) was not a victim of unlawful conduct, (ii) filed the action knowing that he or she was not the victim of unlawful conduct, and (iii) initiated the action for an improper purpose to harass the defendant. The failure to comply with procedural requirements in this Chapter shall not be the basis for a finding that the plaintiff was not a victim."

SECTION 2. G.S. 50C-7 reads as rewritten:

"**§ 50C-7. Permanent civil no-contact order.**

Upon a finding that the victim has suffered an act of unlawful conduct committed by the respondent, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no-contact order shall be issued without notice to the respondent."

SECTION 3. G.S. 50C-8(a) reads as rewritten:

"(a) A temporary civil no-contact order shall be effective for not more than 10 days as the court fixes, unless within the time so fixed the temporary civil no-contact order, for good cause shown, is extended for a like period or a longer period if the respondent consents. The reasons for the extension shall be stated in the temporary order. ~~In case~~ If a temporary ex parte civil no-contact ~~order~~ order:

(1) ~~is~~ Is granted without notice and a motion for a permanent civil no-contact order is made, it shall be set down for hearing ~~at the earliest possible time and takes precedence over all matters except older matters of the same character.~~within 10 days from the date of the motion.

(2) Is denied, the trial on the plaintiff's motion for a civil no-contact order shall be set for hearing within 30 days from the date of the denial.

When the motion for a permanent civil no-contact order comes on for hearing, the complainant may proceed with a motion for a permanent civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the temporary civil no-contact order. On two days' notice to the complainant or on such shorter notice to that party as the judge may

prescribe, the respondent may appear and move its dissolution or modification. In that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require."

SECTION 4. G.S. 50C-5(b)(7) reads as rewritten:

"(b) The court may grant one or more of the following forms of relief in its orders under this Chapter:

...

(7) Order other relief deemed necessary and appropriate by the ~~court.~~court, including assessing attorneys' fees to either party."

SECTION 5. This act becomes effective October 1, 2013, and applies to actions commenced on or after that date.

SENATE BILL 409:
Amend Civil No-Contact Laws

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 26, 2013
Introduced by:	Sen. Tarte	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition S409-CSRK-38		Committee Counsel

SUMMARY: ***This act provides for the court to assess attorneys' fees, and costs against the plaintiff for filing or service of the complaint under certain conditions, and amends the procedure for the setting of hearings. This act becomes effective October 1, 2013, and applies to actions commenced on or after that date.***

BILL ANALYSIS:

(1) The act allows the court to (i) assess attorneys' fees against either party, and (ii) assess costs to the plaintiff for the filing or service of the complaint (and attorneys' fees), if the court makes the following findings after the presentation of evidence:

- The plaintiff initiated the action for an improper purpose to harass the defendant.
- The plaintiff had knowledge that he or she was not the victim of unlawful conduct.
- The plaintiff was not a "victim" in the case.

The court may not assess costs or attorneys' fees based on procedural grounds.

(2) The act also provides that:

- If a temporary civil no-contact order is granted, then a hearing shall be set for a permanent civil no-contact order no later than 10 days from the date of the motion for a permanent order.
- If a request for a temporary, ex parte civil no-contact order is denied, then the trial on the plaintiff's request for a civil no-contact order shall be set down for hearing within 30 days of the date of the denial.

EFFECTIVE DATE: This act becomes effective October 1, 2013, and applies to actions commenced on or after that date.

O. Walker Reagan
Director

S409-SMRK-60 CSRK-38 -V3

Research Division
(919) 733-2578

SENATE BILL 553
Health Care Committee Substitute Adopted 5/2/13

Short Title: LME/MCO Enrollee Grievances & Appeals. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH GRIEVANCE AND APPEAL PROCEDURES FOR LOCAL MANAGEMENT ENTITY/MANAGED CARE ORGANIZATION (LME/MCO) MEDICAID ENROLLEES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 108D.**

"**LME/MCO Enrollee Grievances and Appeals.**

"Article 1.

"General Provisions.

"**§ 108D-1. Definitions.**

The following definitions apply in this Chapter, unless the context clearly requires otherwise:

(1) Applicant. – A provider of MH/IDD/SA services who is seeking to participate in the closed network of one or more LME/MCOs.

(2) Closed network. – A network of providers that have contracted with an LME/MCO to furnish MH/IDD/SA services to enrollees.

(3) Contested case hearing. – The hearing or hearings conducted at OAH pursuant to G.S. 108D-8 to resolve a dispute between an enrollee and an LME/MCO about a managed care action.

(4) Department. – The North Carolina Department of Health and Human Services.

(5) Emergency medical condition. – As defined in 42 C.F.R. § 438.114.

(6) Emergency services. – As defined in 42 C.F.R. § 438.114.

(7) Enrollee. – A Medicaid beneficiary who is currently enrolled with an LME/MCO.

(8) Local Management Entity or LME. – As defined in G.S. 122C-3(20b).

(9) Local Management Entity/Managed Care Organization or LME/MCO. – An LME that has contracted with the Department to operate an MCO or PIHP in accordance with 42 C.F.R. § 438.

(10) Managed care action. – An action, as defined in 42 C.F.R. § 438.400(b).

(11) Managed Care Organization or MCO. – As defined in 42 C.F.R. § 438.2.

(12) MH/IDD/SA services. – Those mental health, intellectual or developmental disabilities, and substance abuse services covered under a contract in effect between the Department and an LME to operate an MCO or PIHP under the

1915(b)/(c) Medicaid Waivers approved by the federal Centers for Medicare and Medicaid Services (CMS).

(13) Network provider. – An appropriately credentialed provider of MH/IDD/SA services who has entered into a contract for participation in the closed network of one or more LME/MCOs. The term also includes a provider of emergency services.

(14) Notice of managed care action. – The notice required by 42 C.F.R. § 438.404.

(15) Notice of resolution. – The notice described in 42 C.F.R. § 438.408(e).

(16) OAH. – The North Carolina Office of Administrative Hearings.

(17) Prepaid Inpatient Health Plan or PIHP. – As defined in 42 C.F.R. § 438.2.

(18) Provider. – As defined in G.S. 108C-2(10).

(19) Provider of emergency services. – A provider who is qualified to furnish emergency services to evaluate or stabilize an enrollee's emergency medical condition.

"**§ 108D-2. Scope; applicability of this Chapter.**

This Chapter applies to every LME/MCO and to every applicant, enrollee, provider of emergency services, and network provider of an LME/MCO.

"**§ 108D-3. Conflicts; severability.**

(a) To the extent that this Chapter conflicts with the Social Security Act or 42 C.F.R. Part 438, federal law prevails to the extent of the conflict.

(b) To the extent that this Chapter conflicts with any other provision of State law that is contrary to the principles of managed care that will ensure successful containment of costs for behavioral health care services, this Chapter prevails and applies.

(c) If any section, term, or provision of this Chapter is adjudged invalid for any reason, these judgments shall not affect, impair, or invalidate any other section, term, or provision of this Chapter, but the remaining sections, terms, and provisions shall be and remain in full force and effect.

"**§ 108D-4. LME/MCO enrollee grievance and appeal procedures, generally.**

(a) Each LME/MCO shall establish and maintain internal grievance and appeal procedures that (i) comply with the Social Security Act and 42 C.F.R. Part 438, Subpart F, and (ii) afford enrollees, and network providers authorized in writing to act on behalf of enrollees, constitutional rights to due process and a fair hearing.

(b) Enrollees, or network providers authorized in writing to act on behalf of enrollees, may file requests for grievances and LME/MCO level appeals orally or in writing. An oral filing must be followed by a written, signed grievance or appeal unless the enrollee or network provider requests an expedited appeal.

(c) An LME/MCO shall not attempt to influence, limit, or interfere with an enrollee's right or decision to file a grievance, request for an LME/MCO level appeal, or a request for a contested case hearing. However, nothing in this Chapter shall be construed to prevent an LME/MCO from any of the following:

(1) Offering an enrollee alternative services.

(2) Engaging in clinical or educational discussions with enrollees or network providers.

(3) Engaging in informal attempts to resolve enrollee concerns prior to the issuance of a notice of grievance disposition or notice of resolution.

(d) An LME/MCO shall not take punitive action against a network provider for any of the following:

(1) Filing a grievance on behalf of an enrollee or supporting an enrollee's grievance.

(2) Requesting an LME/MCO level appeal on behalf of an enrollee or supporting an enrollee's request for an LME/MCO level appeal.

(3) Requesting an expedited LME/MCO level appeal on behalf of an enrollee or supporting an enrollee's request for an LME/MCO level expedited appeal.

(4) Requesting a contested case hearing on behalf of an enrollee or supporting an enrollee's request for a contested case hearing.

"**§ 108D-5. LME/MCO enrollee grievances.**

(a) Filing of Grievance. – An enrollee, or a network provider authorized in writing to act on behalf of an enrollee, has the right to file a grievance with an LME/MCO at any time to express dissatisfaction about any matter other than a managed care action. Upon receipt of a grievance, an LME/MCO shall acknowledge receipt of the grievance in writing by United States mail.

(b) Notice of Grievance Disposition. – The LME/MCO shall resolve the grievance as expeditiously as the enrollee's health condition requires, but no later than 90 days after receipt of the grievance. The LME/MCO shall provide the enrollee and all other affected parties with written notice of the grievance disposition by United States mail within this 90-day period.

(c) No Appeal of a Grievance Disposition. – An enrollee, or a network provider authorized in writing to act on behalf of an enrollee, receiving a grievance disposition has no right to the administrative appeal procedures described in G.S. 108D-6, 108D-7, and 108D-8.

"**§ 108D-6. Standard LME/MCO enrollee level appeals.**

(a) Notice of Managed Care Action. – Except as otherwise provided by federal law or regulation, at least 10 days before the effective date of a managed care action, an LME/MCO shall provide an enrollee with written notice of a managed care action and of the enrollee's right to appeal the managed care action. The LME/MCO shall not be required to notify an enrollee's parent, guardian, or legal representative unless the enrollee's parent, guardian, or legal representative has requested in writing to receive the notice. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

(1) An identification of the enrollee whose services are being affected by the managed care action, including the enrollee's 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 managed care action.

(4) The effective date of the managed care action.

(5) An explanation of the recipient's right to appeal the LME/MCO's managed care action in an evidentiary hearing before an administrative law judge.

(6) An explanation of how the recipient can request a hearing and a statement that the recipient may represent himself or herself or use legal counsel, a relative, or other spokesperson.

(7) A statement regarding the enrollee's right to have benefits continue pending resolution of the appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services.

(8) The name and telephone number of a contact person at the LME/MCO to respond in a timely fashion to the enrollee's questions.

(9) The telephone number by which the recipient may contact a Legal Aid/Legal Services office.

(10) The appeal request form that the enrollee may use to request a hearing.

(b) Request for Appeal. – An enrollee, or a network provider authorized in writing to act on behalf of the enrollee, has the right to file a request for an LME/MCO level appeal of a

notice of managed care action no later than 30 days after the mailing date of the notice of managed care action. Upon receipt of a request for an LME/MCO level appeal, an LME/MCO shall acknowledge receipt of the request for appeal in writing by United States mail.

(c) Continuation of Benefits. – An LME/MCO shall continue the enrollee's benefits during the pendency of an LME/MCO level appeal to the same extent required under 42 C.F.R. § 438.420.

(d) Notice of Resolution. – The LME/MCO shall resolve the appeal as expeditiously as the enrollee's health condition requires, but no later than 45 days after receiving the request for appeal. The LME/MCO shall provide the enrollee and all other affected parties with a written notice of resolution by United States mail within this 45-day period.

(e) Right to Request Contested Case Hearing. – An enrollee, or a network provider authorized in writing to act on behalf of an enrollee, may file a request for a contested case hearing pursuant to G.S. 108D-8 as long as the enrollee or network provider has exhausted the appeal procedures described in G.S. 108D-6 or G.S. 108D-7, if applicable.

(f) Request Form for Contested Case Hearing. – In the same mailing as the notice of resolution, the LME/MCO shall also provide the enrollee with an appeal request form for a contested case hearing that meets the requirements of G.S. 108D-8(e).

"**§ 108D-7. Expedited LME/MCO enrollee level appeals.**

(a) Request for Expedited Appeal. – When the time limits for completing a standard appeal could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, an enrollee, or a network provider authorized in writing to act on behalf of an enrollee, has the right to file a request for an expedited appeal of a managed care action no later than 30 days after the mailing date of the notice of managed care action. For expedited appeal requests made by enrollees, the LME/MCO shall determine if the enrollee qualifies for an expedited appeal. For expedited appeal requests made by network providers on behalf of enrollees, the LME/MCO shall presume an expedited appeal is necessary.

(b) Notice of Denial for Expedited Appeal. – If the LME/MCO denies a request for an expedited LME/MCO level appeal, the LME/MCO shall make reasonable efforts to give the enrollee and all other affected parties oral notice of the denial and follow up with written notice of denial by United States mail by no later than two calendar days after receiving the request for an expedited appeal. In addition, the LME/MCO shall resolve the appeal within the time limits established for standard LME/MCO level appeals in G.S. 108D-6.

(c) Continuation of Benefits. – An LME/MCO shall continue the enrollee's benefits during the pendency of an expedited LME/MCO level appeal to the extent required under 42 C.F.R. § 438.420.

(d) Notice of Resolution. – If the LME/MCO grants a request for an expedited LME/MCO level appeal, the LME/MCO shall resolve the appeal as expeditiously as the enrollee's health condition requires and no later than three working days after receiving the request for an expedited appeal. The LME/MCO shall provide the enrollee and all other affected parties with a written notice of resolution by United States mail within this three-day period.

(e) Right to Request Contested Case Hearing. – An enrollee, or a network provider authorized in writing to act on behalf of an enrollee, may file a request for a contested case hearing pursuant to G.S. 108D-8 as long as the enrollee, or network provider, has exhausted the appeal procedures described in G.S. 108D-6 or G.S. 108D-7.

(f) Request Form for Contested Case Hearing. – In the same mailing as the notice of resolution, the LME/MCO shall also provide the enrollee with an appeal request form for a contested case hearing that meets the requirements of G.S. 108D-8(e).

"**§ 108D-8. Contested case hearings on disputed managed care actions.**

(a) Jurisdiction of OAH. – The Office of Administrative Hearings does not have jurisdiction over a dispute concerning a grievance. The Office of Administrative Hearings does

not have jurisdiction over a dispute involving a managed care action, except as expressly set forth in this Chapter.

(b) Exclusive Administrative Remedy. – Notwithstanding any provision of State law or rules to the contrary, this section is the exclusive method for an enrollee to contest a notice of resolution issued by an LME/MCO. G.S. 108A-70.9A, 108A-70.9B, and 108A-70.9C do not apply to enrollees contesting a managed care action.

(c) Request for Contested Case Hearing. – A request for an administrative hearing to appeal a notice of resolution issued by an LME/MCO is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. An enrollee, or a network provider authorized in writing to act on behalf of an enrollee, has the right to file a request for appeal to contest a notice of resolution as long as the enrollee or network provider has exhausted the appeal procedures described in G.S. 108D-6 or G.S. 108D-7, if applicable.

(d) Filing Procedure. – An enrollee, or a network provider authorized in writing to act on behalf of an enrollee, may appeal a notice of resolution by filing an appeal request form that meets the requirements of subsection (f) of this section at OAH and sending a copy of the filing to the affected LME/MCO by no later than 30 days after the mailing date of the notice of resolution. A request for appeal is deemed filed when a completed and signed appeal request form has been both submitted into the care and custody of the chief hearings clerk of OAH and accepted by the chief hearings clerk. Upon receipt of a timely filed appeal request form, information contained in the notice of resolution is no longer confidential, and the LME/MCO shall immediately forward a copy of the notice of resolution to OAH electronically. OAH may dispose of these records after one year.

(e) Parties. – The LME/MCO shall be the respondent for purposes of this appeal. Either the LME/MCO or enrollee may move for the permissive joinder of the Department pursuant to Rule 20 of the North Carolina Rules of Civil Procedure. The Department may move to intervene as a necessary party pursuant to Rules 19 and 24 of the North Carolina Rules of Civil Procedure.

(f) Appeal Request Form. – In the same mailing as the notice of resolution, the LME/MCO shall also provide the enrollee with an appeal request form for a contested case hearing which shall be no more than one side of one page. The form shall include at least all of the following:

(1) A statement that in order to request an appeal, the enrollee must file the form by mail or fax at the address or fax number listed on the form by no later than 30 days after the mailing date of the notice of resolution.

(2) The enrollee's name, address, telephone number, and Medicaid identification number.

(3) A preprinted statement that indicates that the enrollee would like to appeal a specific managed care action identified in the notice of resolution.

(4) A statement informing the enrollee of the right to be represented at the contested case hearing by a lawyer, a relative, a friend, or other spokesperson.

(5) A space for the enrollee's signature and date.

(g) Continuation of Benefits. – An LME/MCO shall continue the enrollee's benefits during the pendency of an appeal to the same extent required under 42 C.F.R. § 438.420. Notwithstanding any other provision of State law, the administrative law judge does not have the power to order and shall not order an LME/MCO to continue benefits in excess of what is required by 42 C.F.R. § 438.420.

(h) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures conducted pursuant to this section in order to complete the case as quickly as possible.

(1) To the extent possible, OAH shall schedule and hear contested Medicaid cases within 55 days of submission of a request for appeal.

(2) OAH shall conduct all contested case hearings telephonically or by video technology with all parties, unless the enrollee requests that the hearing be conducted in person before the administrative law judge. An in-person hearing shall be conducted in the county that contains the North Carolina headquarters of the LME/MCO; however, for good cause shown, the in-person hearing may be conducted in the county of residence of the enrollee or a nearby county. Good cause shall include, but is not limited to, the enrollee's impairments limiting travel or the unavailability of the enrollee's treating professional witnesses. OAH shall provide written notice to the enrollee of the use of telephonic hearings, hearings by video conference, and in-person hearings before the administrative law judge, and how to request a hearing in the enrollee's county of residence.

(3) 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 an enrollee who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing.

(4) The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances. Continuances shall only be granted in accordance with rules adopted by OAH and shall not be granted on the day of the hearing, except for good cause shown. If a petitioner fails to make an appearance at a hearing that has been properly noticed via certified mail by OAH, OAH shall immediately dismiss the contested case, unless the recipient moves to show good cause within three business days of the date of dismissal.

(5) The notice of hearing provided by OAH to the enrollee shall include the following information:

a. The enrollee's right to examine at a reasonable time before the hearing and during the hearing the contents of the enrollee's case file and documents to be used by the LME/MCO in the hearing before the administrative law judge.

b. The recipient's right to an interpreter during the appeals process.

c. Circumstances in which a medical assessment may be obtained at agency expense and be made part of the record. Qualifying circumstances include those in which (i) a hearing involves medical issues, such as a diagnosis, an examining physician's report, or a medical review team's decision; and (ii) the administrative law judge considers it necessary to have a medical assessment other than that performed by the individual involved in making the original decision.

(i) Mediation. – Upon receipt of an appeal request form as provided by G.S. 108D-8(f) or other clear request for a hearing by an enrollee, OAH shall immediately notify the Mediation Network of North Carolina, which shall contact the recipient within five days 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. Upon completion of the mediation, the mediator shall inform OAH and the LME/MCO within 24 hours of the

resolution by facsimile or electronic messaging. If the parties have resolved matters in the mediation, OAH shall dismiss the case. OAH shall not conduct a hearing of any contested case involving a dispute of a managed care action until it has received notice from the mediator assigned that either (i) the mediation was unsuccessful, (ii) the petitioner has rejected the offer of mediation, or (iii) the petitioner has failed to appear at a scheduled mediation. Nothing in this subsection shall restrict the right to a contested case hearing.

(j) Burden of Proof. – The enrollee has the burden of proof to show entitlement to a requested benefit or the propriety of requested action when the LME/MCO has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from a managed care action to impose a penalty or to reduce, terminate, or suspend a previously granted benefit. 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.

(k) New Evidence. – The enrollee shall be permitted to submit evidence regardless of whether it was obtained before or after the LME/MCO's managed care action and regardless of whether the LME/MCO had an opportunity to consider the evidence in resolving the LME/MCO level appeal. Upon the receipt of new evidence and at the request of the LME/MCO, the administrative law judge shall continue the hearing for a minimum of 15 days and a maximum of 30 days in order to allow the LME/MCO to review the evidence. Upon reviewing the evidence, if the LME/MCO decides to reverse the managed care action taken against the enrollee, it shall immediately inform the administrative law judge of its decision.

(l) Issue for Hearing. – For each managed care action, the administrative law judge shall determine whether the LME/MCO substantially prejudiced the rights of the enrollee and whether the LME/MCO, based upon evidence at the hearing:

(1) Exceeded its authority or jurisdiction.
(2) Acted erroneously.
(3) Failed to use proper procedure.
(4) Acted arbitrarily or capriciously.
(5) Failed to act as required by law or rule.

(m) To the extent that anything in this Part, Chapter 150B of the General Statutes, or any rules or policies adopted pursuant to these Chapters is inconsistent with the Social Security Act or 42 C.F.R. Subpart F, Part 438, federal law prevails and applies to the extent of the conflict. All rules, rights, and procedures for contested case hearings concerning managed care actions shall be construed so as to be consistent with federal law and shall provide the enrollee with no lesser and no greater rights than those provided under federal law.

"**§ 108D-9. Notice of final decision and right to seek judicial review.**

The administrative law judge assigned to conduct a contested case hearing pursuant to G.S. 108D-8 shall hear and decide the case without unnecessary delay. The judge shall prepare a written decision that includes findings of fact and conclusions of law and send it to the parties in accordance with G.S. 150B-37. The written decision shall notify the parties of the final decision and of the right of the enrollee and the LME/MCO to seek judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

SECTION 2. G.S. 122C-3 is amended by adding a new subdivision to read:

"(20c) "Local management entity/managed care organization" or "LME/MCO" means an LME that has been approved by the Department to operate the 1915(b)/(c) Medicaid Waiver."

SECTION 3. G.S. 122C-151.3 reads as rewritten:

"**§ 122C-151.3. Dispute with area authorities or county programs.**

(a) An area authority or county program shall establish written procedures for resolving disputes over decisions of an area authority or county program that may be appealed to the

State MH/DD/SA Appeals Panel under G.S. 122C-151.4. The procedures shall be informal and shall provide an opportunity for those who dispute the decision to present their position.

(b) This section does not apply to enrollee grievances or appeals subject to Chapter 108D of the General Statutes."

SECTION 4. G.S. 122C-151.4(g) reads as rewritten:

"(g) This section does not apply to ~~providers of community support services who appeal directly to the Department of Health and Human Services under the Department's community support provider appeal process.~~enrollee grievances or appeals subject to Chapter 108D of the General Statutes."

SECTION 5. G.S. 150B-23 is amended by adding a new subsection to read:

"(a3) A Medicaid enrollee, or network provider authorized in writing to act on behalf of the enrollee, who appeals a notice of resolution issued by an LME/MCO pursuant to Chapter 108D may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article. For purposes of contested cases commenced under this subsection, an LME/MCO is an agency."

SECTION 6. On or before December 1, 2013, the Department of Health and Human Services shall submit to the Centers for Medicare and Medicaid Services, a Medicaid State Plan Amendment necessary to implement this act.

SECTION 7. This act becomes effective June 1, 2014, upon approval by the Centers for Medicare and Medicaid Services of the Medicaid State Plan Amendment required in Section 6 of this act. The Department of Health and Human Services shall report to the Revisor of Statutes when approval is obtained and the date of the approval.

SENATE BILL 553:
LME/MCO Enrollee Grievances & Appeals

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2013
Introduced by:	Sen. Hise	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 553 would establish a Local Management Entity/Managed Care Organization (LME/MCO) process for enrollee grievances and appeals of managed care actions.***

CURRENT LAW: G.S. 108A-70.9A and 108A-70.9B govern the process used by a Medicaid recipient to appeal an adverse determination made by the Department to deny, terminate, suspend, or reduce a recipient's request for Medicaid services. Under current law, the Department must send the recipient a written notice 10 days before the adverse determination will take effect. The notice must include certain elements as specified. The recipient has 30 days from the mailing of the notice to request a hearing by sending the appeal request form to the Office of Administrative Hearings (OAH).

Once an appeal has been requested, the parties have an opportunity for mediation with the Mediation Network of North Carolina. In general, OAH must schedule and hear the case within 55 days of the date the appeal was requested; OAH must send the recipient a notice of hearing and the administrative law judge (ALJ) may allow brief extensions of time for good cause and to ensure that the record is complete. In general, hearings are conducted by telephone, but the recipient may request that the hearing be conducted in person in Wake County. The in-person hearing may be conducted in another county if the recipient shows good cause.

During the hearing process, the recipient is allowed to submit new evidence regardless of whether it was obtained before or after the Department's actions. The recipient has the burden of proof unless the adverse determination is an action on a previously granted benefit. The ALJ decides whether the Department substantially prejudiced the rights of the recipient and if the Department exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. After the hearing, the ALJ sends the final decision to the parties, and either party may seek judicial review in superior court.

BACKGROUND: S.L. 2011-264 (HB 916), as amended by Section 13 of S.L. 2012-151, directed the Department of Health and Human Services to proceed with statewide restructuring of the management responsibilities for the delivery of services to individuals with mental illness, intellectual and developmental disabilities, and substance abuse disorders through the expansion of the 1915(b)/(c) Medicaid Waiver. "1915(b)/(c) Medicaid Waiver" refers to two sections of the Social Security Act allowing states to apply for a waiver from Medicaid policy. A 1915(b) waiver allows the State to provide services through managed care systems or to otherwise limit the choice of providers and 1915(c) waiver allows the State to provide services in a home and community setting rather than an institutional setting. North Carolina is concurrently implementing these two types of waivers.

Senate Bill 553 contains references to numerous sections in 42 C.F.R., Part 438. Title 42 of the Code of Federal Regulations (C.F.R.) pertains to Public Health; Chapter IV of Subchapter C, pertains to the Centers for Medicare & Medicaid Services, Department of Health and Human Services, Medical Assistance Programs; and Part 438 provides for Managed Care. Part 438 is divided into Subparts A-J. Subpart F outlines a Grievance System.

BILL ANALYSIS: Section 1 of the bill would establish a new Chapter 108D of the General Statutes providing for Local Management Entity/Managed Care Organization (LME/MCO) Enrollee Grievances and Appeals. The new Chapter would apply to every LME/MCO and to every applicant, enrollee, provider of emergency services, and network provider. To the extent the new Chapter conflicts with federal law, federal law would prevail; to the extent the new Chapter conflicts with other provisions of State law, the new Chapter 108D would prevail.

General Procedures: The bill would establish the following general LME/MCO grievance and appeal procedures:

- Each LME/MCO would be required to establish and maintain internal grievance and appeal procedures that (i) comply with applicable federal laws, and (ii) provide enrollees constitutional rights to due process and a fair hearing.
- Enrollees, or providers authorized to act on their behalf, would be allowed to file requests for grievances and LME/MCO level appeals orally or in writing. An oral filing would generally be followed by a written, signed request.
- An LME/MCO would be prohibited from attempting to influence, limit, or interfere with an enrollee's right to file a grievance, request an appeal, or request a contested case hearing. However, an LME/MCO is not prevented from offering alternative services, engaging in clinical or educational discussions, or engaging in informal attempts to resolve enrollee concerns prior to the issuance of a notice of grievance disposition or notice of resolution.
- An LME/MCO would be prohibited from taking punitive action against a network provider for supporting or for requesting the following actions on behalf of an enrollee: grievance, LME/MCO level appeal, expedited LME/MCO level appeal, or a contested case hearing.

Specific Procedures:

LME/MCO Grievances (G.S. 108D-5) – Allows an enrollee, or provider acting on behalf of an enrollee, to file a grievance with an LME/MCO at any time to express dissatisfaction about any matter other than a managed care action (defined in G.S. 108D-1(10)). The LME/MCO must resolve the grievance and provide the enrollee and other affected parties written notice of the grievance disposition by mail no later than 90 days after receipt. Once a grievance disposition is received, there would be no right to further administrative appeal under this bill.

Standard LME/MCO Appeals (G.S. 108D-6) – G.S. 108D-6(a), pertaining to Notice of Managed Care Action, mirrors language currently in G.S. 108A-70.9A(c) providing notice for Medicaid recipient appeals. In general, the section provides that not later than 30 days after the mailing date of a notice of a managed care action, an enrollee, or provider acting on behalf of an enrollee, may file a request for an LME/MCO level appeal. An LME/MCO must acknowledge receipt of the appeal by mail, continue the enrollee's benefits during the pendency of an appeal as required by federal law (42 C.F.R. Part 438.20), and resolve the appeal and provide written notice by mail not later than 45 days after receiving the appeal request. The mailing with the notice of resolution must include an appeal request form for a contested case hearing.

Expedited LME/MCO Appeals (G.S. 108D-7) – An expedited appeal for a managed care action may be filed when time limits for a standard appeal could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function. A request for an expedited appeal must be filed no later than 30 days after the mailing date of the notice of the managed care action.

The LME/MCO will determine if an enrollee qualifies for an expedited appeal. If the LME/MCO denies a request for an expedited appeal it must make reasonable efforts to give oral notice, followed by written notice via mail, within 2 calendar days of the expedited appeal request to the enrollee and

other affected parties. When an LME/MCO denies a request for expedited appeal it must resolve the appeal within the time required for standard appeals (in G.S. 108D-6). An LME/MCO must presume an expedited appeal is necessary if the appeal is made on behalf of an enrollee by a network provider.

The LME/MCO must continue the enrollee's benefits during the pendency of an expedited appeal to the extent required by federal law and resolve the expedited appeal and provide the enrollee and affected parties written notice by mail within 3 working days. The mailing with the notice of resolution must include an appeal request form for a contested case hearing.

Contested Case Hearings (G.S. 108D-8) – G. S. 108D-8(f) pertaining to the Appeal Request Form is similar to existing law in G.S. 108A-70.9A(e) for Medicaid appeals. Additionally, the following subsections in G.S. 108D-8 mirror, or are similar to subsections contained in current law (G.S. 108A-70.9B) providing for Medicaid Contested Cases and therefore have not been summarized: (h) Simple Procedures;[1] (i) Mediation, (i) Burden of Proof; (k) New Evidence; and (l) Issue for Hearing. In general the section provides that an enrollee, or network provider authorized in writing to act on behalf of an enrollee, may appeal a notice of resolution by filing an appeal request form at OAH and sending a copy of the filing to the affecting LME/MCO no later than 30 days after the mailing of the notice of resolution. The LME/MCO is the respondent for purposes of the appeal and either the LME/MCO or enrollee may move for the permissive joinder of the Department, pursuant to Rule 20 of the NC Rules of Civil Procedure. The Department may move to intervene as a necessary party pursuant to Rules 19 and 24 of the NC Rule of Civil Procedure. The LME/MCO must continue the enrollee's benefits during the pendency of an appeal as required by federal law (42 C.F.R., Part 438.420).

Notice of final decision/right to seek judicial review (G.S. 108D-9) - Similar to the provisions in G.S. 108A-70.9A(f) for contested Medicaid cases, the administrative law judge must hear and decide the case without unnecessary delay and prepare a written decision including the findings of fact and conclusions of law that must be sent to the parties in accordance with G.S. 150B-37. The written decision will notify the parties of the final decision and the right of the enrollee and the LME/MCO to seek judicial review pursuant to Article 4 of Chapter 150B.

Sections 2, 3 and 4 of the bill would make the following changes to Chapter 122C pertaining to Mental Health, Developmental Disabilities, and Substance Abuse.

- Section 2 would add a definition for "LME/MCO" to G.S. 122C-3.
- Section 3 would amend G.S. 122C-151.3 to specify that the statutory section regarding the dispute with area authorities or county programs does not apply to enrollee grievances or appeal subject to the new Chapter 108D.
- Section 4 would amend G.S. 122C-151.4(g) pertaining to appeals to the State MH/DD/SA Appeals Panel, to specify that the provision does not apply to enrollee grievances or appeals subject to the new Chapter 108D.

Section 5 of the bill would amend G.S. 150B-23 to add a new subsection providing that a Medicaid enrollee, or network provider acting on behalf of an enrollee, who appeals a notice of resolution issued by an LME/MCO may commence a contested case in the same manner as any other petitioner and the case shall be conducted in the same manner as other contested cases. It further specifies that for purposes of contested cases under the new subsection, an LME/MCO is an agency.

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[1] G.S. 108D-8(h) (2) allows the in-person hearing to be conducted in the county that contains the NC headquarters of the LME/MCO, G.S. 108A-70.9B(b)(2) pertaining to contested Medicaid cases requires the in-person hearing to be conducted in Wake County.

Section 6 of the bill would direct the Department of Health and Human Services to submit the Medicaid State Plan Amendment (SPA) necessary to implement the bill to the Centers for Medicare and Medicaid Services (CMS) on or before December 1, 2013.

EFFECTIVE DATE: The bill would become effective June 1, 2014, upon approval by CMS of the Medicaid SPA required in Section 6 of the bill. The Department would be required to report the date of the approval to the Revisor of Statutes when approval is obtained.

Jennifer Hillman, Research Division attorney, provided the Current Law summary.
Theresa Matula, Legislative Analyst for the Senate Health Care Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 636
PROPOSED COMMITTEE SUBSTITUTE S636-CSRV-31 [v.1]
5/8/2013 2:14:33 PM

Short Title: Wildlife Resources Comm. Penalty Changes. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BOATING SAFETY ACT BY INCREASING THE FINES AND OTHERWISE AMENDING THE PENALTY AND OTHER PROVISIONS OF THAT ACT AND BY AMENDING THE PENALTY PROVISIONS FOR SPECIFIC VIOLATIONS OF THE WILDLIFE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75A-3 reads as rewritten:

"**§ 75A-3. Wildlife Resources Commission to administer Chapter; ~~Vessel Committee;~~Boating Safety Committee; funds for administration.**

(a) The Commission shall enforce and administer the provisions of this Chapter.

(b) The chair of the Commission shall designate from among the members of the Commission three members who shall serve as the ~~Vessel Committee~~Boating Safety Committee of the Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. Interest and other investment income earned by the Account accrues to the Account. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. The Commission shall use at least three dollars ($3.00) of each one-year certificate of number fee and at least nine dollars ($9.00) of each three-year certificate of number fee collected under the numbering provisions of G.S. 75A-5 for boating access area acquisition, development, and maintenance."

SECTION 2. G.S. 75A-6.1(c) reads as rewritten:

"(c) Violation of the navigation rules specified in subsection (a) of this section shall constitute ~~a Class 3 misdemeanor and is punishable only by a fine not to exceed one hundred dollars ($100.00).~~an infraction as provided in G.S. 14-3.1."

SECTION 3. G.S. 75A-10 reads as rewritten:

"**§ 75A-10. Operating vessel or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.**

(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device on the waters of this State in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall manipulate any water skis, surfboard, nonmotorized vessel, or similar device on the waters of this State while under the influence of an impairing substance.

(b1) No person shall operate any vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance, or

(2) After having consumed sufficient alcohol that the person has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.

(b2) The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under subsections (b) and (b1) of this section. The relevant definitions contained in G.S. 20-4.01 shall apply to subsections (b), (b1), and (b2) of this section.

(b3) A person who violates a provision of ~~subsection (a), (b), or (b1)~~subsection (a) or (b) of this section is guilty of a Class 2 misdemeanor.

(b4) A person who violates subsection (b1) of this section is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00).

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(e) A person who willfully violates subsection (d) of this section is guilty of a Class 1 misdemeanor. A person who willfully violates subsection (d) of this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation."

SECTION 4. G.S. 75A-13.1(d) reads as rewritten:

"(d) A person who violates a provision of this section is ~~guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed twenty-five dollars ($25.00).~~responsible for an infraction as provided in G.S. 14-3.1."

SECTION 5. G.S. 75A-13.3(b1) reads as rewritten:

"(b1) A person who is the lawful owner of a personal watercraft or a person having control of a personal watercraft who knowingly allows a person under 16 years of age ~~who operates~~to operate a personal watercraft in violation of the provisions of subsection (b) of this section is ~~guilty of~~ responsible for an infraction as provided in G.S. 14-3.1."

SECTION 6. G.S. 75A-13.3(c3) reads as rewritten:

"(c3) A vessel livery shall provide the operator of a leased personal watercraft with basic safety instruction prior to allowing the operation of the leased personal watercraft. "Basic safety instruction" shall include direction on how to safely operate the personal watercraft and a review of the safety provisions of this section. A vessel livery that fails to provide basic safety instruction is ~~guilty of a Class 3 misdemeanor.~~ responsible for an infraction as provided in G.S. 14-3.1."

SECTION 7. G.S. 75A-16.2 reads as rewritten:

"**§ 75A-16.2. Boating safety education required.**

(a) No person shall operate a vessel with a motor of 10 horsepower or greater on the public waters of this State unless the operator has met the requirements for boating safety education.

(b) A person shall be considered in compliance with the requirements of boating safety education if the person does one of the following:

(1) Completes and passes the boating safety course instituted by the Wildlife Resources Commission under G.S. 75A-16.1 or another boating safety course that is approved by the National Association of State Boating Law Administrators (NASBLA) and accepted by the Wildlife Resources Commission;

(2) Passes a proctored equivalency examination that tests the knowledge of information included in the curriculum of an approved course;

(3) Possesses a valid or expired license to operate a vessel issued to maritime personnel by the United States Coast Guard;

(4) Possesses a State-approved nonrenewable temporary operator's certificate to operate a vessel for 90 days that was issued with the certificate of number for the vessel, if the boat was new or was sold with a transfer of ownership;

(5) Possesses a rental or lease agreement from a vessel rental or leasing business that lists the person as the authorized operator of the vessel;

(6) Properly displays Commission-issued dealer registration numbers during the demonstration of the vessel;

(7) Operates the vessel under onboard direct supervision of a person who is at least 18 years of age and who meets the requirements of this section;

(8) Demonstrates that he or she is not a resident, is temporarily using the waters of this State for a period not to exceed 90 days, and meets any applicable boating safety education requirements of the state or nation of residency;

(9) Has assumed operation of the vessel due to the illness or physical impairment of the initial operator, and is returning the vessel to shore in order to provide assistance or care for the operator;

(10) Is registered as a commercial fisherman or a person who is under the onboard direct supervision of a commercial fisherman while operating the commercial fisherman's boat; or

(11) Provides proof that he or she ~~is at least 26 years of age.~~was born before January 1, 1988.

Any person who operates a vessel with a motor of 10 horsepower or greater on the waters of this State shall, upon the request of a law enforcement officer, present to the officer a certification card or proof that the person has complied with the provisions of this section.

(c) Any person who violates a provision of this section or a rule adopted pursuant to this section is ~~guilty of~~ responsible for an infraction, as provided in ~~G.S. 14-3.1. The court shall assess court costs for each violation but shall not assess a penalty.~~G.S. 14-3.1, and shall pay a fine of fifty dollars ($50.00). A person may not be ~~convicted of~~ responsible for violating this section ~~if, when tried for the offense,~~ if the person produces in court at the adjudicatory hearing a certification card or proof that the person has completed and passed a boating safety course in compliance with subdivision (b)(1) of this section.

(d) No unit of local government shall enact any ordinance or rule relating to boating safety education, and this law preempts all existing ordinances or rules.

(e) An operator of a personal watercraft on the public waters of this State remains subject to any more specific provision of law found in G.S. 75A-13.3."

SECTION 8. G.S. 75A-17(f) reads as rewritten:

"(f) Vessels operated on the waters of this State shall slow to a no-wake speed when passing within 100 feet of a law enforcement vessel that is displaying a flashing blue light unless the vessel is in a narrow channel. Vessels operated on the waters of this State in a narrow channel shall slow to a no-wake speed when passing within 50 feet of a law enforcement vessel that is displaying a flashing blue light. A person who violates this

subsection is ~~guilty of a Class 3 misdemeanor.~~responsible for an infraction as provided in G.S. 14-3.1."

SECTION 9. G.S. 75A-18 reads as rewritten:

"**§ 75A-18. Penalties.**

(a) Except as otherwise provided, a person who violates a provision of this Article or who violates a rule adopted under authority of this Chapter is ~~guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed two hundred and fifty dollars ($250.00) for each violation.~~responsible for an infraction as provided in G.S. 14-3.1.This limitation shall not apply in a case where a more severe penalty is prescribed in this Chapter.

(b) through (e) Repealed by Session Laws 2006-185, s. 1."

SECTION 10. G.S. 113-294 reads as rewritten:

"**§ 113-294. Specific violations.**

(a) Any person who unlawfully sells, possesses for sale, or buys any wildlife is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00) unless a greater penalty is prescribed for the offense in question.

(b) Any person who unlawfully sells, possesses for sale, or buys any deer or wild turkey is guilty of a Class 2 misdemeanor, punishable by a fine of not less than ~~two hundred fifty dollars ($250.00)~~five hundred dollars ($500.00) in addition to such other punishment prescribed for the offense in question.

(c) Any person who unlawfully takes, possesses, or transports any wild turkey is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(c1) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or buys any bear or bear part is guilty of a Class 1 misdemeanor, punishable by a fine of not less than two thousand dollars ($2,000) in addition to such other punishment prescribed for the offense in question. Each of the acts specified shall constitute a separate offense.

(c2) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or buys any cougar (Felis concolor) is guilty of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(c3) Any person who unlawfully takes, possesses, or transports any elk from State-owned land is guilty of a Class 1 misdemeanor, punishable by a fine of not less than two thousand five hundred dollars ($2,500) in addition to such other punishment prescribed for the offense in question.

(d) Any person who unlawfully takes, possesses, or transports any deer is guilty of a Class 3 misdemeanor, punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(d1) Any person who unlawfully takes, possesses, or transports any deer from land that has been posted in accordance with the provisions of G.S. 14-159.7 without written permission of the landowner, lessee, or the agent of the landowner or lessee is guilty of a Class 2 misdemeanor, punishable by a fine of not less than five hundred dollars ($500.00).

(e) Any person who unlawfully takes deer between a half hour after sunset and a half hour before sunrise with the aid of an artificial light is guilty of a Class 2 misdemeanor, punishable by a fine of not less than ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) in addition to such other punishment prescribed for the offense in question.

(f) Any person who unlawfully takes, possesses, transports, sells, or buys any beaver, or violates any rule of the Wildlife Resources Commission adopted to protect beavers, is guilty of a Class 3 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(g) Any person who unlawfully takes wild animals or birds from or with the use of a vessel equipped with a motor or with motor attached is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(h) Any person who willfully makes any false or misleading statement in order to secure for himself or another any license, permit, privilege, exemption, or other benefit under this Subchapter to which he or the person in question is not entitled is guilty of a Class 1 misdemeanor.

(i) Any person who violates any provision of G.S. 113-291.6, regulating trapping, is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(j) Any person who unlawfully sells, possesses for sale, or buys a fox, or who takes any fox by unlawful trapping or with the aid of any electronic calling device is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(k) Repealed by Session Laws 1995, c. 209, s. 1.

(l) Any person who unlawfully takes, possesses, transports, sells or buys any bald eagle or golden eagle, alive or dead, or any part, nest or egg of a bald eagle or golden eagle is guilty of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(m) Any person who unlawfully takes any migratory game bird with a rifle; or who unlawfully takes any migratory game bird with the aid of live decoys or any salt, grain, fruit, or other bait; or who unlawfully takes any migratory game bird during the closed season or during prohibited shooting hours; or who unlawfully exceeds the bag limits or possession limits applicable to any migratory game bird; or who violates any of the migratory game bird permit or tagging rules of the Wildlife Resources Commission is guilty of a Class 2 misdemeanor, punishable by a fine of not less than ~~one hundred dollars ($100.00)~~two hundred fifty dollars ($250.00) in addition to any other punishment prescribed for the offense in question.

(n) Any person who violates any rule of the Commission that restricts access by vehicle on game lands to a person who holds a special vehicular access identification card and permit issued by the Commission to persons who have a handicap that limits physical mobility shall be guilty of a Class 2 misdemeanor and shall be fined not less than one hundred dollars ($100.00) in addition to any other punishment prescribed for the offense.

(o) Any person who willfully transports or attempts to transport live coyotes (Cania latrans) into this State for any purpose, or who breeds coyotes for any purpose in this State, is guilty of a Class 1 misdemeanor, and upon conviction the Wildlife Resources Commission shall suspend any controlled hunting preserve operator license issued to that person for two years.

(p) Any person who willfully imports or possesses black-tailed or mule deer (Odocoileus hemionus and all subspecies) in this State for any purpose is guilty of a Class 1 misdemeanor.

(q) Any person who violates any provision of G.S. 113-291.1A is guilty of a Class 1 misdemeanor.

(r) It is unlawful to place processed food products as bait in any area of the State where the Wildlife Resources Commission has set an open season for taking black bears. For purposes of this subsection, the term "processed food products" means any food substance or flavoring that has been modified from its raw components by the addition of ingredients or by treatment to modify its chemical composition or form or to enhance its aroma or taste. The term includes substances modified by sugar, honey, syrups, oils, salts, spices, peanut butter, grease, meat, bones, or blood, as well as extracts of such substances. The term also includes sugary products such as candies, pastries, gums, and sugar blocks, as well as extracts of such products. Nothing in this subsection prohibits the lawful disposal of solid waste or the legitimate feeding of domestic animals, livestock, or birds. The prohibition against taking bears with the use and aid of bait shall not apply to the release of dogs in the vicinity of any food source that is not a processed food product as defined herein. Violation of this subsection constitutes a ~~Class 2 misdemeanor.~~Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00).

(s) Any person who violates the provisions of G.S. 113-291.12 by unlawfully removing feral swine from a trap while the swine is still alive or by transporting such swine after that removal is guilty of a ~~Class 2 misdemeanor.~~Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00). The acts of removal from a trap and of transporting the swine after removal shall constitute separate offenses."

SECTION 11. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 636:
Wildlife Resources Comm. Penalty Changes

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 8, 2013
Introduced by:	Sen. Newton	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition S636-CSRV-31		Committee Counsel

SUMMARY: ***Senate Bill 636 would amend penalties for various violations of boating safety and hunting laws and related rules adopted by the Wildlife Resources Commission.***

CURRENT LAW: Among other things, the Wildlife Resources Commission (WRC) is charged with the administration and enforcement of State laws governing boating safety and the regulation of wildlife, and with adoption and enforcement of associated rules.

Infractions: An infraction, as defined in G.S. 14-3.1, is a noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more than $100.

BILL ANALYSIS: Senate Bill 636 would change the name of the WRC's "Vessel Committee" to the "Boating Safety Committee" and amend various penalties applicable to violations of boating safety and hunting laws.

Sections 2-9 of the bill would make the following changes with regard to penalties imposed for violations of the Boating Safety Act:

- Makes violation of navigational rules an infraction. (Currently a Class 3 misdemeanor).
- Imposes a minimum fine of $250 for operation of a vessel while under the influence of an impairing substance, or while having an alcohol concentration of 0.08 or more. The offense remains a Class 2 misdemeanor as provided under current law.
- Makes violation of law pertaining to the display of a diver's flag when skin diving and scuba diving an infraction (Currently a Class 3 misdemeanor with a maximum fine of $25)
- Makes it an infraction for the lawful owner or person having control of a personal watercraft to knowingly allow operation of the watercraft by a person under the age of 16. (Under current law, the minor would be charged with the infraction)
- Makes it an infraction for a vessel livery to fail to provide basic safety instruction to the operator of a leased personal watercraft prior to allowing the operation of the watercraft. (Currently a Class 3 misdemeanor)
- Provides that a person who provides proof that he or she was born before January 1, 1998 is considered in compliance with the requirements of boating safety education (currently, person must be at least 26 years of age); specifies that a person who violates boating safety education requirements must pay a fine of $50 (Currently a violator would pay court costs, but no fine)
- Makes failure to slow to a no-wake speed when passing within specified distances of a law enforcement vehicle an infraction. (Currently a Class 3 misdemeanor)
- Eliminates the criminal penalty for violation of boating and water safety rules adopted by the WRC pursuant to its statutory authority, and for violations of the Boating Safety Act (Currently, except as otherwise provided, violation is a Class 3 misdemeanor punishable by a fine not to exceed $250).

Section 10 of the bill would make the following changes with regard to fines imposed for violations associated with the regulation of wildlife:

- Imposes a minimum fine of $250 for the unlawful sale, possession for sale, or purchase of wildlife. The offense remains a Class 2 misdemeanor as provided under current law
- Increases the minimum fine for the unlawful sale, possession for sale, or purchase of deer or wild turkey from $250 to $500. The offense remains a Class 2 misdemeanor as provided under current law.
- Increases the minimum fine for the unlawful taking, possession, or transportation of deer from $100 to $250. The offense remains a Class 3 misdemeanor as provided under current law.
- Increases the minimum fine for the unlawful taking of deer between a half hour after sunset and a half hour before sunrise with the aid of an artificial light from $250 to $500. The offense remains a Class 2 misdemeanor as provided under current law.
- Increases the minimum fine for violations of various prohibitions on the taking, permit, or tagging rules pertaining to migratory game birds from $100 to $250.
- Imposes a minimum fine of $250 for the unlawful taking of black bears with the use and aid of processed food products as bait. The offense remains a Class 2 misdemeanor as provided under current law.
- Imposes a minimum fine of $250 for the unlawful removal of feral swine from a trap while the swine is still alive, or by transporting the swine after removal. The offense remains a Class 2 misdemeanor as provided under current law.

The bill would also create two new criminal offenses:

- The unlawful taking, possession, or transportation of elk from State-owned land would be a Class 1 misdemeanor punishable by a fine of not less than $2,500.
- The unlawful taking, possession, or transportation of deer from properly posted land without written permission from the landowner, the landowner's agent, or a lessee would be a Class 2 misdemeanor punishable as with a fine of not less than $500.

EFFECTIVE DATE: The bill would become effective December 1, 2013, and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 636 (First Edition)

SHORT TITLE: Wildlife Resources Comm. Penalty Changes.

SPONSOR(S): Senator Newton

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
NET STATE IMPACT	**Likely budget cost. See Assumptions & Methodology section for additional details.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE: December 1, 2013 and applies to offenses committed on or after that date

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: $88-$165 per disposition
- Indigent Defense Services: Savings of $166 to a cost of $0 in district court
  Savings of $321 to a cost of $0 in superior court without a trial
  Savings of $847 to a cost of $0 in superior court with a trial
- Prison Section: No estimated impact
- Community Corrections: Minimum of $1,416-$1,960

In addition, this bill would generate an additional $57,100 for the Civil Penalty and Forfeiture Fund annually.

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Sections 2 through 7 of this bill make numerous changes to existing penalties for violating specific wildlife laws and create some new offenses.

Section 2 amends existing G.S. 75A-6.1(c) to state that violation of any rule governing navigational lighting adopted by the commission shall constitute a Class 3 misdemeanor. Currently it is a Class 3 misdemeanor punishable only by a fine not to exceed $100 if an individual violates the navigational rules specified in subsection (a).

Section 3 amends existing G.S. 75A-10, Operating vessel or manipulating water skis etc.; in reckless manner; operating, etc.; while intoxicated, etc.: depositing or discharging litter, etc. by changing the penalty for subsection (b1) – no person shall operate any vessel while underway on the waters of this State while under the influence of any impairing substance, or after having consumed sufficient alcohol that the person has, at any relevant time after the boating, an alcohol concentration of .08 or more – from just a Class 2 misdemeanor offense to a Class 2 misdemeanor offense plus a fine of not less than $250.

Section 5 amends existing G.S. 75A-16.2, Boating safety education required, by changing subsection (b)(11) to require that the person was born before January 1, 1988 (was that he or she was at least 26 years of age). Subsection (c), which states that a person who violates a provision of this section or a rule adopted pursuant to this section is guilty of an infraction and the court shall access court costs for each violation but shall not assess a penalty. This bill amends subsection (c) to require a $50 fine.

Section 6 of the bill decriminalizes some Class 3 misdemeanors via an amendment to G.S. 75A-18, Penalties. Currently, G.S. 75A-18(a) states that a person who violates a provision of Article 1, the Boating Safety Act, of Chapter 75A of the General Statues or a rule adopted under the authority of Chapter 75A shall be guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed $250 for each violation. The proposed amendment decriminalizes some of the Class 3 misdemeanors by striking the language "or who violates a rule adopted under authority of this Chapter" from G.S. 75A-18(a) and adding subsection (f) to provide that a person who violates a rule adopted by the Wildlife Resources Commission is guilty of an infraction and shall pay a fine of $50 and shall not be assessed court costs. According to the Wildlife Resources Commission, the rules for which a violation would be made an infraction by this bill include:

- 15A NCAC 10F .0106(a), Numbers not displayed properly, illegible, etc.
- 15A NCAC 10F .0201(b), Requirements for personal flotation devices
- 15A NCAC 10F .0301-.0376, Operate a vessel at greater than no-wake speed in a designated and marked no wake zone
- 15A NCAC 10F .0201(c), Operate vessel which was not equipped with fire extinguishers
- 15A NCAC 10F .0201(f), Operate vessel which was not equipped with sound devices

Section 7 of this bill creates two new misdemeanor offenses in Chapter 113, Conservation and Development, of the General Statutes, by amending G.S. 113-294, Specific violations. The bill creates a new subsection (c3) which provides that it shall be a Class 1 misdemeanor, punishable by a fine of not less than $2,500 in addition to such other punishment prescribed for the offense, for any person to unlawfully take, possess, or transport any elk from State-owned land. The bill also creates a Class 2 misdemeanor with the addition of subsection (d1) to G.S. 113-294, which states that any person who unlawfully, without written permission of the landowner, lessee, or agent of the landowner or lessee, takes, possesses, or transports any deer from land that has been posted in accordance with G.S. 14-159.7.

This bill has an effective date of December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

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

Section 2 of this bill amends existing G.S. 75A-6.1(c). This change expands the pool of potential types of offenses punishable under this statute, which may result in an increase in the number of charges for this offense, and eliminates the provision that requires that these violations be punishable only by a fine. The Administrative Office of the Courts currently does not have a specific offense code for the Class 3 misdemeanor offense. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Section 3 of this bill amends existing G.S. 75A-10. In FY 2011-12, 257 defendants were charged with operating a vessel or manipulating water skis in a reckless manner or depositing or discharging litter. The addition of a fine of not less than $250 may result in a more rigorous defense and fewer pleas in these types of cases. Since trials are a more costly and time intensive manner of disposition than pleas, any increase in the number of trials will impact the workload of the court system. The number of additional trials and corresponding costs cannot be estimated.

Section 5 of this bill amends existing G.S.75A-16.2. AOC data shows that 47 individuals were cited for this infraction in FY 2011-12. Court costs for infractions are currently $173; by only requiring the payment of a $50 fine instead of court costs there may be fewer instances of respondents contesting the citation and possibly fewer dismissals. The workload requirements for court staff to process these cases will remain essentially the same. By removing the requirement to pay court costs, there will be some decline in General Fund revenue, as well as to the other funds that receive a portion of these costs (detail in table below).

New District Court Criminal Filings		
Fee:	Revenue to:	Amount per case:
General Court of Justice	General Fund	127.05
	State Bar*	2.45
Phone	Court System	4.00
Facilities	Local Government*	12.00
Misdemeanant Confinement Fund Fee	Misdemeanant Confinement Fund	18.00
LEO Retirement/Insurance		7.50
LEO Training and Certification Fee		2.00
Collection Assistance Fee	General Fund*	*
TOTAL TO GENERAL FUND		**$173.00**

*Ten percent (10%) of the State Bar and Facilities fee is remitted to the General Fund as a collection assistance fee.
Note: plus a $10.00 Chapter 20 Fee for conviction of any Chapter 20 offense; plus a $2.00 DNA fee for criminal offenses only (does not apply to infractions); plus a $5.00 service fee for each arrest or service of criminal process, including citations and subpoenas.

Section 6 amends existing G.S. 75A-18, so that only violations of the provisions of this Article are Class 3 misdemeanor offenses subject to a fine not to exceed $250. New subsection (f) is added to provide that a person who violates a rule adopted by the Commission is guilty of an infraction and shall pay a fine of $50 and not be assessed court costs. AOC does not have offense codes for these violations, which may be some indication that these offenses are infrequently charged. On average, the monetary value of court personnel time to process these offenses at their current level as Class 3 misdemeanors is estimated at $31. The average cost associated with disposing of infractions is also $31, so there will be no measurable cost savings to the court system from this change.

Court costs for infractions are currently $180; instead of requiring the payment of court costs and a fine up to $250 (as is current law), this bill would require the payment of a $50 fine and no court costs. The result may be fewer instances of respondents contesting the citation and fewer dismissals. As is the case with the changes proposed in Section 5 above, by removing the requirement to pay court costs there will be some decline in General Fund revenue as well as to other funds that receive a portion of these costs (detail in table above).

Section 7 amends G.S. 113-294 by adding a fine or increasing the allowable fine for certain offenses listed in subsections (a), (b), (d), (e), (m), (r), and (s). Subsection (d) is a class 3 misdemeanor offense; the others are Class 2 misdemeanors. The addition of a fine or the increase of an existing fine may result in a more rigorous defense and fewer pleas in these types of cases. Since trials are a more costly and time intensive manner of disposition than pleas, any increase in the number of trials will impact the workload of the court system. The number of additional trials and corresponding costs cannot be estimated.

New subsection (c)(3) creates the offense of unlawfully taking, possessing, or transporting an elk from State-owned land, which shall be a Class 1 misdemeanor punishable by a fine of not less than $2,500. New subsection (d1) creates the offense of unlawfully taking, possessing or transporting any deer from land that has been posted in accordance with the provisions of G.S. 14-159.7 without written permission of the landowner or lessee. This is a Class 2 misdemeanor punishable by a fine of not less than $500.

Since these are new charges, it is not known how many individuals will be charged. For every additional person charged with a Class 1 misdemeanor, AOC estimates the average cost to the court would be $165.

For every additional person charged with a Class 2 misdemeanor, AOC estimates the average cost to the court would be $88.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS's private assigned counsel costs do not distinguish between classes of misdemeanors, so IDS is unable to quantify the impact on PAC costs from the second two changes in the chart below. Reclassifying an existing misdemeanor as an infraction would generate savings for IDS because there is no right to appointed counsel for an infraction. The following chart represents the changes in IDS' per case costs for each indigent case disposed in district court.

Current Statute	Proposed Statute	Current Class	Proposed Class	Per Case Cost Change for PAC
75A-18(a)	75A-18(f)	Class 3 MD	Infraction	-$166
113-294(a)	113-294(c3)	Class 2 MD	Class 1 MD	Not quantifiable
113-294(d)	113-294(d1)	Class 3 MD	Class 2 MD	Not quantifiable

The following chart represents the changes in IDS' per case costs for each indigent case disposed in superior court.

Current Statute	Proposed Statute	Current Class	Proposed Class	Per Case Cost Change for PAC
75A-18(a)	75A-18(f)	Class 3 MD	Infraction	-$321 non-trial -$847 trial
113-294(a)	113-294(c3)	Class 2 MD	Class 1 MD	Not quantifiable
113-294(d)	113-294(d1)	Class 3 MD	Class 2 MD	Not quantifiable

Civil Penalty and Forfeiture Fund

The Civil Penalty and Forfeiture Fund (CPFF) is a significant source of revenue for North Carolina's public schools. Fines and forfeitures are the proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by State agencies. This bill would increase the fines for several misdemeanors and infractions, which would go directly to the CPFF.

G.S. 113-294, Specific violations, contains 19 misdemeanor offenses (subsections (a) through (s)). Four of the offenses have AOC Offense Codes. There are no offense codes for G.S. 75A-6.1 or G.S. 75A-18, indicating that these may be infrequently charged. In addition there also may be convictions that are not being counted. The Sentencing Commission, which provided this data, counts convictions where this offense is the most serious offense; in other words, if a person has a conviction for one of these misdemeanors and for a felony, they will show up as a conviction for the felony and not for the misdemeanor. The following chart shows the revenue generated for the Civil Penalty and Forfeiture Fund due to changes in this bill

Current Statute	Offense	Current Fine	Proposed Fine	Number of Convictions in FY 2011-12	Total to Civil Penalty and Forfeiture Fund
G.S. 14-3.1	Boating safety education	$0	$50	47	$2,350
G.S. 75A-10	Operating a vessel while impaired	$0	$250	105	$26,250
G.S. 113-294(a)	Selling/buying wildlife	$0	$250	1	$250
G.S. 113-294(d)	Possessed deer taken closed season	$100	$250	18	$2,700
G.S. 113-294(e)	Spotlight deer/night deer hunt	$250	$500	77	$19,250
G.S. 113-295(m)	Unlawfully take migratory bird	$100	$250	42	$6,300
				Total:	**$57,100**

Department of Public Safety –Prison Section

This bill decriminalizes some misdemeanors and creates two new Class 2 misdemeanors. The North Carolina Sentencing and Policy Advisory Commission expect no impact on the prison population since offenders who receive active sentences will serve them in a local jail. The Department of Public Safety does not anticipate an impact on prison custody projections. It is also not known how many offenders might be convicted and sentenced to supervision in the community under the proposed bill.

Department of Public Safety – Community Correction Section

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[1] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Section 2 of this bill expands the pool of potential types of offenses punishable under this statute. In FY 2011-12, 30% of offenders convicted of a Class 3 misdemeanor were sentenced to active sentences; none received intermediate sentences; and 70% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of community punishment imposed for this offense class was 12 months. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,307 (360 days times $3.63 per day).

Section 6 of this bill reclassifies violations of G.S. 75A-18(a) from Class 3 misdemeanors to infractions. Currently, violations of G.S. 75A-18(a) are punishable by a fine only. Therefore reclassifying these violations as infractions has no impact on community corrections.

Section 7 of this bill creates a Class 1 misdemeanor and a Class 2 misdemeanor with the additions of subsections (c) and (d1) respectively to G.S. 113-294. Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on community corrections. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and

[1] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day).

In FY 2011-12, 29% of offenders convicted of a Class 2 misdemeanor were sentenced to active sentences for an average length of 39 days; 1% received intermediate sentences; and 70% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 16 and 13 months, respectively. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives an intermediate sentence is $1,742 (480 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives community supervision is $1,416 (390 days times $3.63 per day).

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:

Maggie Morrissey

Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: May 6, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 5-9 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Trey Penland	Burnsville	Hise
2. Kristin Morrow	Roper	Jenkins
3. Gabbie Holmes	Sanford	Rabin
4. Olivia de Araujo	Goldsboro	Pate
5. John Easterling	Lawrenburg	McLaurin
6.		
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 05/09/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. JUSTIN OWENS
5. _____
6. _____

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

May 9, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jonathan Barbaker	Barbaker + Assoc.
Stephanie Hawco	WP TF
Ann Rodriguez	NC Council of Comm Programs
Deb Clary	NCSP
Andy Chase	KMA
Kerra Bolton	LCA
Karl Knapp	NCLM
M Johnson Hostler	NCCAA
Jimmie Massengill	NC DMV
Reita Smolka	NCDMV
TRACY DAVIT	NCDMV

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

May 9, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
JAY PETERS	CSS
Colleen Kochanek	ICLC
[illegible]	NCRMA
Alex Bodger	CSS
Julia Adams	The Arc of NC/NCARF
Abby Emerson	NMSS
Sheria Reid	SOG/LRS

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

May 9, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
CHRIS DILLON	NCWRC
GORDON MYERS	" "
CHRIS HUEBNER	" "
MALCOLM MARTIN	" "
JEFF BARNHART	MWC
Annaliese Dolph	Dolph Law
Sara Perdue	NCSPAC
Amanda Hoxie	Tratner Sanders
Adam Sholar	DHHS
[illegible]	NS
Gary Robertson	AP

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

May 9, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rose Hudson	NC Health News
Kara Mitchell	Bennett
Renee Allen	N&O
David Kolbaba	NC Board of Nursing
Sarah Rothacker	Brubaker C Assoc

Senate Committee on Judiciary II
Thursday, May 30, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 114	No SS# Req/Absolute Divorce.	Representative Stevens
HB 142	Provide Access to Campus Police Records.	Representative Daughtry Representative S. Ross
HB 532	No Drinking in EMS & Law Enforcement Vehicles.	Representative Elmore Representative McNeill Representative Jackson
HB 593	Register of Deeds Hours.	Representative Daughtry
HB 641	Amend Deferred Prosecution/1st Drug Offense.	Representative Davis Representative Daughtry
HB 813	Ban Synthetic Cannabinoids.	Representative Horn Representative Moffitt Representative Blust

Adjournment

Senate Judiciary II Committee
Thursday, May 30, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, May 30, 2013 in room 1124 of the Legislative Building. Andrew Scott of Raleigh, Thomas McBrayer of Hickory, Marcus Alexander of Lincoln, Cortney McCoy of Clayton and Antoinette Dyer of Raleigh served as pages. Senator Allran presided as chair.

H.B. 813 – Ban Synthetic Cannabinoids

Representative Horn was recognized to explain the bill which would ban all synthetic cannabinoids. It would also add a specific cannabinoid to the current list of synthetic cannabinoids. Senator Bryant moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 593 – Register of Deeds Hours

Representative Daughtry was recognized to explain the bill which would require registers of deeds to maintain regular office hours. Senator Bingham moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 142 – Provide Access to Campus Police Records

Representative Ross was recognized to explain the bill which would provide public access to certain information maintained by campus police agencies affiliated with private, nonprofit institutions of higher education. Tim McDowell, representing the NC Independent Colleges and Universities, was recognized to answer questions. Senator Bingham moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 114 – No SS# Req/Absolute Divorce

Representative Alexander was recognized to explain the bill. It would eliminate the requirement that Social Security numbers of parents of minor children be included in complaints or judgments in actions for absolute divorce. Kim Crouch, representing the NC Bar Association, was recognized to speak in favor of the bill and to answer questions. Senator Bryant moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 532 – No Drinking in EMS & Law Enforcement Vehicles

Representative Elmore was recognized to explain the bill. It would amend the law pertaining to the operation of certain vehicles after consuming alcohol, to make it unlawful for a person to operate an ambulance or other EMS vehicle, a firefighting vehicle, or a law enforcement vehicle after consuming alcohol. Senator Randleman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 641 – Amend Deferred Prosecution/1st Drug Offense

Representative Davis was recognized to explain the bill. Senator Bingham moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would exclude a person with a previous Class A1 misdemeanor from entry into the deferred prosecution program. It also provides that a judge, with the agreement of the district attorney, could find that it inappropriate for a person who would otherwise be eligible for deferred prosecution to be placed in the program. Senator McKissick was recognized to offer a technical amendment which replaced the words "deferred prosecution" with "conditional discharge". Senator Cook moved to adopt the amendment and the motion carried. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the amendment is attached.

The meeting adjourned at 10:49 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 30, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 114 HO	No SS# Req/Absolute Divorce.	Representative Stevens
HB 142 BC	Provide Access to Campus Police Records.	Representative Daughtry Representative S. Ross
HB 532 BC	No Drinking in EMS & Law Enforcement Vehicles.	Representative Elmore Representative McNeill Representative Jackson
HB 593 BC	Register of Deeds Hours.	Representative Daughtry
HB 641 HP	Amend Deferred Prosecution/1st Drug Offense.	Representative Davis Representative Daughtry
HB 813 HP	Ban Synthetic Cannabinoids.	Representative Horn Representative Moffitt Representative Blust

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, May 30, 2013

Senator Daniel,
submits the following with recommendations as to passage:

FAVORABLE

HB **114** **(CS#1)** No SS# Req/Absolute Divorce.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **142** **(CS#1)** Provide Access to Campus Police Records.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **532** **(CS#1)** No Drinking in EMS & Law Enforcement Vehicles.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **593** **(CS#1)** Register of Deeds Hours.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **813** **(CS#1)** Ban Synthetic Cannabinoids.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Senator Warren Daniel will handle HB 114
Senator Austin Allran will handle HB 142
Senator Shirley Randleman will handle HB 532
Senator Warren Daniel will handle HB 593
Senator Warren Daniel will handle HB 813

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, May 30, 2013

Senator Allran,
submits the following with recommendations as to passage:

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

HB **641** Amend Deferred Prosecution/1st Drug Offense.

Draft Number:	H641-PCS70439-RK-59
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Austin Allran will handle HB 641

HOUSE BILL 813
Committee Substitute Favorable 5/8/13

Short Title: Ban Synthetic Cannabinoids. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE THE MANUFACTURE, POSSESSION, SALE, USE, AND DELIVERY OF ALL SYNTHETIC CANNABINOIDS UNLAWFUL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-94 reads as rewritten:

"**§ 90-94. Schedule VI controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that such substance comes within this schedule, the Commission shall find: no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physiological dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects.

The following controlled substances are included in this schedule:

(1) Marijuana.

(2) Tetrahydrocannabinols.

(3) Synthetic cannabinoids. – Any quantity of any synthetic chemical compound that (i) is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring substances or (ii) has a stimulant, depressant, or hallucinogenic effect on the central nervous system ~~Any material, compound, mixture, or preparation~~ that is not listed as a controlled substance in Schedule I through V, and is not an FDA-approved ~~drug,~~ drug. Synthetic cannabinoids include, but are not limited to, the substances listed in sub-subdivisions a. through j. of this subdivision and any substance that contains any quantity of ~~the following substances,~~ their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical ~~designation:~~designation. The following substances are examples of synthetic cannabinoids and are not intended to be inclusive of the substances included in this Schedule:

...

j. Tetramethylcyclopropanoylindoles. Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,

1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. Some trade name or other names: "XLR-11.""

SECTION 2. This act becomes effective July 1, 2013, 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 813:
Ban Synthetic Cannabinoids

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 29, 2013
Introduced by:	Reps. Horn, Moffitt, Blust	**Prepared by:**	Hal Pell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***This act bans all synthetic cannabinoids, and adds a specific cannabinoid to the current list of examples of synthetic cannabinoids. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.***

CURRENT LAW: The synthetic cannabinoids listed by chemical structure are included within Schedule VI of the Controlled Substances Act.

BILL ANALYSIS:

Section 1:

- Provides that a "synthetic cannabinoid" is any quantity of any synthetic compound that meets either one of the following definitions:
    - Is a cannabinoid receptor agonist and mimics the pharmacological effect of a naturally occurring substance.
    - Has a stimulant, depressant, or hallucinogenic effect on the central nervous system.

The definition of synthetic cannabinoid would result in the inclusion in Schedule VI of any drug that affects a cannabinoid receptor and has the same pharmacological effect as a naturally occurring substance [marijuana]. In addition, a chemical compound that has a stimulant, depressant, or hallucinogenic effect on the central nervous system would also be included in Schedule VI.

- The section also adds a new synthetic compound, known as "XLR11," to the list of synthetic cannabinoids under Schedule VI of the Controlled Substances Act.

BACKGROUND: The following information is a reprinted excerpt from a report from the Center For Disease Control (http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6206a1.htm)(footnotes omitted). The report concerned acute kidney injury (AKI) resulting from the use of synthetic cannabinoids (SC).

Synthetic cannabinoid compounds originally were developed to facilitate study of cannabinoid receptor pharmacology, but in recent years have emerged as drugs of abuse. In 2005, SC products marketed as "Spice" first emerged in European countries, before appearing in the United States in 2009, where they were marketed initially as "K2." Today, SC products are distributed worldwide under countless trade names and packaged in colorful wrappers designed to appeal to teens, young adults, and first-time drug users. Products often are packaged with disingenuous labels such as "not for human consumption" or "incense," but health professionals and legal authorities are keenly aware that these products are smoked like marijuana. Despite federal and state regulations to prohibit SC sale and distribution, illicit use continues, and reports of illness are increasing.

The expectation of a more intense high than that induced by marijuana, easy access, affordability, and avoidance of detection by many commonly used urine drug tests all contribute to the growing abuse of SCs, especially among male adolescents. The increasing use of SCs by young persons, coupled with mounting evidence of adverse health effects, has led to state and federal legislation. However, full recognition of the potential dangers of SCs is not widespread among users or sellers, and SC products remain available on the Internet and at many convenience stores. Further, differences in state drug enforcement statutes have led to different laws and approaches to drug enforcement.

Although related to delta-9-tetrahydrocannabinol, the active ingredient in marijuana, SCs are two to three times more likely to be associated with sympathomimetic effects (i.e., tachycardia and hypertension), and approximately five times more likely to be associated with hallucination. In addition, an increase in the occurrence of seizures has been reported with SC use. This report describes unanticipated AKI with SC abuse. Given the rapidity with which new SC compounds enter the marketplace and their increasing use in the past 3 years, outbreaks of unexpected toxicity associated with their use are likely to increase.

Management of suspected SC toxicity is symptomatic and supportive; no antidote exists. All of the patients in this report recovered creatinine clearance during their hospital stay, although the length of time was variable; one patient was discharged before his creatinine normalized. However, a risk for long-term kidney sequelae might exist. Recent studies suggest an increased risk for chronic and end-stage renal disease following AKI of various etiologies, despite initial recovery. Physicians caring for otherwise healthy adolescents and young adults with unexplained AKI should inquire about SC use, and cases of suspected SC poisoning should be reported to both the regional poison center and the appropriate state health department. Regional poison centers can be reached by telephone at 1-800-222-1222, from anywhere in the United States.

In this report, the product used by five of the 16 patients, including two patients (cases 13 and 14) who used the same product, contained a novel fluorinated SC (XLR-11). In addition, XLR-11 and/or XLR-11 metabolites were found in five of the seven cases for whom clinical specimens were available. XLR-11 emerged on the SC market in the first half of 2012; therefore, experience with this fluorinated compound has been limited. The consistent finding of XLR-11 in product samples and clinical specimens has alternative explanations. XLR-11, a metabolite, or a contaminant associated with it might be responsible for AKI in these patients, or its presence might simply reflect the widespread use of this particular compound in SC products during the study period rather than a causal association with AKI. Health-care providers should be aware of renal and other unexpected toxicities from use of SC products, especially with newer SC compounds.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

H813-smrk-86(e2)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 593
Committee Substitute Favorable 5/8/13

Short Title: Register of Deeds Hours. (Public)

Sponsors:

Referred to:

April 9, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REGISTERS OF DEEDS TO MAINTAIN REGULAR OFFICE HOURS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-8 is repealed.

SECTION 2. Article 1 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-8.1. Office hours; notice of hours.**

(a) The register of deeds shall ensure that the office is open for the conduct of public business during county office workdays and hours as set by the board of county commissioners pursuant to G.S. 153A-94(b) and shall attend at the office during those periods in person or by deputy. The register of deeds may set the hours for the registration of real estate instruments to begin not more than 30 minutes after the office opens to the public and end not more than 30 minutes before the office closes.

(b) Notwithstanding the requirements of subsection (a) of this section, the register of deeds may temporarily close the office for a limited time with the prior approval of the board of county commissioners or county manager.

(c) The register of deeds shall ensure that the schedule of workdays, holidays, and office hours, including the hours of real estate instrument registration, are posted prominently in the office, on a county government Web site and on the Web site established in subsection (d) of this section. Any change in schedule pursuant to action by the board of county commissioners pursuant to G.S. 153A-94(b) or temporary closing pursuant to subdivision (b) of this section that is not due to severe weather or emergency conditions shall be posted in all locations required by this subsection no less than 10 calendar days prior to the change in schedule or temporary closing. Any temporary closing due to severe weather or emergency conditions shall be posted in all locations required by this subsection as soon as practicable.

(d) The Secretary of State shall establish a Web site and procedures for the posting of the workdays, holidays, and office hours of each county register of deeds office in the manner required by subsection (c) of this section."

SECTION 3. This act becomes effective July 1, 2013.

HOUSE BILL 593:
Register of Deeds Hours

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 29, 2013
Introduced by:	Rep. Daughtry	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 593 would require registers of deeds to maintain regular office hours.

CURRENT LAW: G.S. 153A-94 authorizes a board of county commissioners to prescribe the office hours, workdays, and holidays to be observed by the various offices, departments, boards, commissions, and agencies of the county.

G.S. 161-8 authorizes the board of county commissioners to order what days of each week, and at what hours of each day, the register of deeds must be in the office "in person or by deputy." The register of deeds is required to "give his attendance accordingly."

BILL ANALYSIS: House Bill 593 would repeal G.S. 161-8 and enact a new provision requiring a register of deeds office to be open for the conduct of public business during workdays and hours established by the board of county commissioners for the various offices, departments, boards, commissions, and agencies of the county.

A register of deeds would have the authority to set the hours for registration of real estate instruments to begin not more than 30 minutes after the office opens and end not more than 30 minutes before the office closes. The office may be temporarily closed with prior approval of the board of county commissioners or the county manager.

The bill would require the register of deeds to post workdays, holidays, and office hours in the office, on a county government website, and on a website to be established by the Secretary of State. Any planned change in the schedule must be posted at least 10 days prior to the change; any temporary closing due to severe weather or emergency conditions must be posted as soon as practicable.

EFFECTIVE DATE: The bill would become effective July 1, 2013.

O. Walker Reagan
Director

H593-SMRV-110 E2 -V1

Research Division
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 142
Committee Substitute Favorable 3/7/13

Short Title: Provide Access to Campus Police Records. (Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PUBLIC ACCESS TO CERTAIN INFORMATION MAINTAINED BY CAMPUS POLICE AGENCIES AFFILIATED WITH PRIVATE, NONPROFIT INSTITUTIONS OF HIGHER EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. The catch line of G.S. 74G-5 reads as rewritten:

"**§ 74G-5. ~~Records.~~Campus police program records.**"

SECTION 2. Chapter 74G of the General Statutes is amended by adding a new section to read:

"**§ 74G-5.1. Campus police agency records.**

(a) Each campus police agency is the legal custodian of all books, papers, documents, records of criminal investigations or of criminal intelligence information, or other records and property maintained by the campus police agency. Books, papers, documents, records of criminal investigations or of criminal intelligence information, or other records maintained by a campus police agency that is affiliated with a private, nonprofit institution of higher education shall not be public records as that term is defined in G.S. 132-1.

(b) As used in this section:

(1) "Violation of the law" means crimes and offenses that are prosecutable as misdemeanors or felonies in the criminal courts in this State or the United States.

(2) "Complaining witness" means an alleged victim or other person who reports a violation or apparent violation of the law to a campus police agency.

(c) Notwithstanding the provisions of subsection (a) of this section, as a condition of certification, a campus police agency affiliated with a private, nonprofit institution of higher education shall, upon request by any person and subject to the provisions and implementing regulations of the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f), and the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, permit the following information maintained by the campus police agency to be inspected at reasonable times and under reasonable supervision:

(1) The time, date, location, and nature of a violation or apparent violation of the law reported to the campus police agency.

(2) The name, sex, age, address, employment, and alleged violation of law of a person arrested or formally charged or indicted for an alleged violation of law in a court of competent jurisdiction.

(3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons,

or pursuit, and a description of any items seized in connection with the arrest.

(4) The contents of emergency telephone calls received by or on behalf of the campus police agency, except for such contents that reveal the natural voice, name, address, telephone number, or other information that may identify the caller, victim, or witness. In order to protect the identity of the complaining witness, the contents of emergency telephone calls may be released pursuant to this section in the form of a written transcript or altered voice reproduction; provided that the original shall be provided under process to be used as evidence in any relevant civil or criminal proceeding.

(5) The contents of communications between or among employees of the campus police agency pertaining to the information described in subdivisions (1) through (4) of this subsection that are broadcast over the public airways.

(6) The name, sex, age, and address of a complaining witness.

(7) The daily log of crimes reported to the campus police agency that is maintained pursuant to the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and implementing regulations.

(d) The campus police agency shall furnish copies of the information requested in subsection (c) of this section upon payment of the actual cost of reproducing the information. Any person denied access to or copies of the information listed in subsection (c) of this section may apply to a court of competent jurisdiction for an order compelling disclosure of the information.

(e) A campus police agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise an ongoing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for inspection or copying as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the requesting individual in disclosure against the interests of the campus police agency and the alleged victim in withholding the information.

(f) If a campus police agency believes that the release of information listed in subsection (c) of this section will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial, will undermine an ongoing or future investigation, or will violate the provisions and implementing regulations of the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or the federal Family Educational Rights and Privacy Act, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information.

(g) Actions brought pursuant to subsection (d), (e), or (f) of this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Nothing in this section shall be construed as requiring campus police agencies to disclose the following:

(1) Information that would not be required to be disclosed under Chapter 15A of the General Statutes.

(2) Information that is reasonably likely to identify a confidential informant.

(i) Campus police agencies shall not be required to maintain any recordings of emergency telephone calls for more than 30 days from the time of the call, unless a court of competent jurisdiction orders a portion sealed."

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

HOUSE BILL 142:
Provide Access to Campus Police Records

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 29, 2013
Introduced by:	Reps. Daughtry, S. Ross	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 142 would provide public access to certain information maintained by campus police agencies affiliated with private, nonprofit institutions of higher education.***

CURRENT LAW: Chapter 74G of the General Statutes establishes a Campus Police Program whereby the Attorney General is given the authority to certify a private, nonprofit institution of higher education as a campus police agency and to commission an individual as a campus police officer. Campus police officers must meet and maintain the same minimum standards required for State law enforcement officers by the NC Criminal Justice Education and Training Standards Commission and, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests on the campus, on any road or highway passing through or immediately adjoining the campus, or on any other property while in continuous and immediate pursuit of a person for an offense committed on the campus.

North Carolina's Public Records Law provides that records of criminal investigations conducted by public law enforcement agencies, and records of criminal intelligence information compiled by public law enforcement agencies are not public records. However, certain information is declared to be public record, including: the time, date, location and nature of a reported violation; the name, sex, age, address, employment, and alleged violation of law of a person arrested or charged; the circumstances surrounding an arrest; the contents of "911" and other emergency telephone calls; and the name, sex, age, and address of a complaining witness. In *Ochsner v. Elon*, the NC Court of Appeals found the Public Records Law does not apply to campus police agencies affiliated with a private, nonprofit institution of higher education, as they do not meet the definition of "public law enforcement agency" set forth in the statute. A 3-3 tie vote by the NC Supreme Court allowed the Court of Appeals ruling in *Ochsner v. Elon* ruling to stand, but without precedential value.

BILL ANALYSIS: House Bill 142 would amend the Campus Police Act to specify that campus police agency records are not public records. However, as a condition of certification under the Campus Police Act, campus police agencies would be required to make certain information available to the public. The information subject to disclosure by campus police is substantially the same information declared to be public record under the Public Records Act. The bill contains provisions for temporarily withholding information regarding a complaining witness in certain circumstances, and provides a method for seeking a court order to withhold other information.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 114
Committee Substitute Favorable 2/27/13

Short Title: No SS# Req/Absolute Divorce. (Public)

Sponsors:

Referred to:

February 19, 2013

A BILL TO BE ENTITLED

AN ACT TO NO LONGER REQUIRE THAT A COMPLAINT OR JUDGMENT FOR ABSOLUTE DIVORCE CONTAIN THE SOCIAL SECURITY NUMBER OF A PARTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-8 reads as rewritten:

"**§ 50-8. Contents of complaint; verification; venue and service in action by nonresident; certain divorces validated.**

In all actions for divorce the complaint shall be verified in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148. The plaintiff shall set forth in his or her complaint that the complainant or defendant has been a resident of the State of North Carolina for at least six months next preceding the filing of the complaint, and that the facts set forth therein as grounds for divorce, except in actions for divorce from bed and board, have existed to his or her knowledge for at least six months prior to the filing of the complaint: Provided, however, that if the cause for divorce is one-year separation, then it shall not be necessary to allege in the complaint that the grounds for divorce have existed for at least six months prior to the filing of the complaint; it being the purpose of this proviso to permit a divorce after such separation of one year without awaiting an additional six months for filing the complaint: Provided, further, that if the complainant is a nonresident of the State action shall be brought in the county of the defendant's residence, and summons served upon the defendant personally or service of summons accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1). Notwithstanding any other provision of this section, any suit or action for divorce heretofore instituted by a nonresident of this State in which the defendant was personally served with summons or in which the defendant personally accepted service of the summons and the case was tried and final judgment entered in a court of this State in a county other than the county of the defendant's residence, is hereby validated and declared to be legal and proper, the same as if the suit or action for divorce had been brought in the county of the defendant's residence.

In all divorce actions the complaint shall set forth the name and age of any minor child or children of the marriage, and in the event there are no minor children of the marriage, the complaint shall so state. ~~In addition, when there are minor children of the marriage, the complaint shall state the social security number of the plaintiff and, if known, the social security number of the defendant.~~

In all prior suits and actions for divorce heretofore instituted and tried in the courts of this State where the averments of fact required to be contained in the affidavit heretofore required by this section are or have been alleged and set forth in the complaint in said suits or actions and said complaints have been duly verified as required by Rule 11 of the Rules of Civil

Procedure, said allegations so contained in said complaints shall be deemed to be, and are hereby made, a substantial compliance as to the allegations heretofore required by this section to be set forth in any affidavit; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce.

In all suits and actions for divorce heretofore instituted and tried in this State on and subsequent to the 5th day of April, 1951, wherein the statements, averments, or allegations in the verification to the complaint in said suits or actions are not in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148 or the requirements of this section as to verification of complaint or the allegations, statements or averments in the verification contain the language that the facts set forth in the complaint are true "to the best of affiant's knowledge and belief" instead of the language "that the same is true to his (or her) own knowledge" or similar variation in language, said allegations, statements and averments in said verifications as contained in or attached to said complaint shall be deemed to be, and are hereby made, a substantial compliance as to the allegations, averments or statements required by this section to be set forth in any such verifications; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce. ~~The judgment of divorce shall include, where there are minor children of the parties, the social security numbers of the parties.~~"

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

HOUSE BILL 114:
No SS# Req/Absolute Divorce

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 29, 2013
Introduced by:	Rep. Stevens	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 114 would eliminate the requirement that Social Security numbers of parents of minor children be included in complaints or judgments in actions for absolute divorce. This act is effective when it becomes law.***

CURRENT LAW: In all divorce actions in which there are minor children, the Social Security numbers of the plaintiff and, if known, the defendant, must be contained in the complaint and the judgment for absolute divorce.

BILL ANALYSIS:

The act would remove the requirement for the inclusion of Social Security numbers of the parties in the complaint and in the judgment.

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

H114-smrk-87(e2)

Jan Paul, Staff Attorney, significantly contributed to this summary.

O. Walker Reagan
Director

H114-SMRK-87 E2 -V1

Research Division
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 532
Committee Substitute Favorable 5/2/13

Short Title: No Drinking in EMS & Law Enforcement Vehicles. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIME TO OPERATE AN AMBULANCE, EMS VEHICLE, FIREFIGHTING VEHICLE, OR LAW ENFORCEMENT VEHICLE UPON ANY HIGHWAY, STREET, OR PUBLIC VEHICULAR AREA WITHIN THE STATE WHILE CONSUMING ALCOHOL OR WHILE ALCOHOL REMAINS IN THE PERSON'S BODY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-138.2B(a) reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, ~~or~~ child care ~~vehicle~~ vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol.**

(a) Offense. – A person commits the offense of operating a school bus, school activity bus, ~~or~~ child care ~~vehicle~~ vehicle, ambulance, other emergency medical services vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol if the person drives a school bus, school activity bus, ~~or~~ child care ~~vehicle~~ vehicle, ambulance, other emergency medical services vehicle, firefighting vehicle, or law enforcement vehicle upon any highway, any street, or any public vehicular area within the State while consuming alcohol or while alcohol remains in the person's body. This section does not apply to law enforcement officers acting in the course of, and within the scope of, their official duties."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 532:
No Drinking in EMS & Law Enforcement Vehicles

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 29, 2013
Introduced by:	Reps. Elmore, McNeill, Jackson	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 532 would amend the law pertaining to the operation of certain vehicles after consuming alcohol, to make it unlawful for a person to operate an ambulance or other EMS vehicle, a firefighting vehicle, or a law enforcement vehicle after consuming alcohol.***

CURRENT LAW: G.S. 20-138.2B makes it unlawful for a person to operate a school bus, school activity bus, or child care vehicle while consuming alcohol or while alcohol remains in the person's body. Violation is a Class 3 misdemeanor punishable by a fine of $100; however, for a second or subsequent violation a defendant would be subject to the DWI sentencing laws.

BILL ANALYSIS: House Bill 532 would make it unlawful for a person to operate an ambulance or other EMS vehicle, a firefighting vehicle, or a law enforcement vehicle while consuming alcohol or while any alcohol remains in the person's body. The provision would not apply to law enforcement officers acting within the course and scope of their official duties.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

O. Walker Reagan
Director

H532-SMRV-109 E2 -V1

Research Division
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 641
Second Edition Engrossed 4/23/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H641-CSRK-59 [v.2]
5/29/2013 4:57:30 PM

Short Title: Amend Deferred Prosecution/1st Drug Offense. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WITH A CLASS A1 MISDEMEANOR ASSAULT CONVICTION IS INELIGIBLE FOR DEFERRED PROSECUTION, AND THAT THE COURT HAS THE DISCRETION TO DETERMINE WHETHER TO DEFER PROSECUTION FOR A FIRST OFFENSE OF CERTAIN DRUG OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-96(a) reads as rewritten:

"(a) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal ~~laws;~~ laws, or a Class A1 misdemeanor under Chapter 14 of the General Statutes or a substantially similar offense involving assaultive conduct under federal law or other states' laws; (ii) any offense under this Article; or (iii) an offense under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules I through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90-113.22, or (ii) a felony under G.S. 90-95(a)(3), the court shall, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may ~~require.~~ require, unless the court determines with a written finding, and with the agreement of the District Attorney, that the offender is inappropriate for deferred prosecution for factors related to the offense. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services or in the Treatment for Effective Community Supervision Program under Article 6B of Chapter 143B of the General Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, 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 including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. 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. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions as provided in this subsection."

SECTION 2. The portion of this act that provides for a judicial finding that placement on deferred prosecution may be inappropriate becomes effective December 1, 2013, and applies to persons seeking placement on deferred prosecution for offenses committed on or after that date. A person who has been previously convicted of a Class A1 misdemeanor is ineligible for deferred prosecution, whether the previous misdemeanor conviction occurred prior to, on, or after the effective date of this act.

HOUSE BILL 641:
Amend Deferred Prosecution/1st Drug Offense

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 29, 2013
Introduced by:	Reps. Davis, Daughtry	**Prepared by:**	Hal Pell
Analysis of:	PCS to Second Edition H641-CSRK-59		Committee Counsel

SUMMARY: ***This act would exclude a person with a previous conviction of a Class A1 misdemeanor from entry into the deferred prosecution program. The act also provides that a judge, with the agreement of the district attorney, could find that it would be inappropriate for a person who would otherwise be eligible for deferred prosecution to be placed in the program.***

BACKGROUND and CURRENT LAW:

- The program allows a person who has committed certain offenses involving controlled substances, and who have no prior felony convictions or drug offense convictions, to be placed on probation. Upon successful completion of the probation, the charges are dismissed.
- A Class A1 misdemeanor involves an assault of some type. Examples of Class A1 misdemeanors include sexual battery, assault inflicting serious injury, assault with a deadly weapon, and assault on a law enforcement officer.
- Section 5(a) of The Justice Reinvestment Act (JRA), S.L. 2011-192, required the court to place offenders into the conditional discharge program if all the criteria listed in the statute were met. Prior to the JRA, the court had the discretion whether to allow an offender to enter into the program.

BILL ANALYSIS:

- Currently, a person with any type of misdemeanor conviction is eligible for the deferred prosecution program based upon a first time drug offense. This act would disqualify a person from entry into the deferred prosecution program if the previous misdemeanor conviction was for a Class A1 offense.
- The act would provide a judge with some discretion whether to place an offender into the conditional discharge program. The court must have the agreement of the district attorney, and make a finding that entry into the deferred prosecution program would not be appropriate for the person seeking deferred prosecution.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date. Any prior Class A1 misdemeanor conviction, regardless of when it occurred, would result in disqualification for entry into the program.

O. Walker Reagan
Director

H641-SMRK-85 CSRK-59 -V2

Research Division
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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 641 DATE 5/30

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

COMMITTEE SUBSTITUTE _____

Rep.)
(Sen.) ALLRAN

1 moves to amend the bill on page 1, line 2
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the words "DEFERRED PROSECUTION,"
4 and substituting the words "A CONDITIONAL
5 DISCHARGE,"
6
- and on page 1, lines 4 and 5, by
deleting the words "DEFER PROSECUTION"
9 and substituting the words "GRANT A
10 CONDITIONAL DISCHARGE",
11
12 and on page 1, line 20, by deleting
13 the words "deferred prosecution" and
14 substituting the words "a conditional
15 discharge".
16
17
18
19

SIGNED Allran

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 5-30 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Andrew Scott	Raleigh	Nesbitt
2. Thomas McBrayer	Hickory	Allran
3. Marcus Alexander	Lincoln	D. Curtis
4. Cortney McCoy	Clayton	Apodaca
5. Antoinette Dyer	Raliegh	Nesbit
6.		
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 05/30/13 ROOM: 1124

1. BILLY FRITSCHER
2. ROBERT YOUNG
3. ASHLEY MICKENS
4. _____

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

May 30, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tim Mulvaney	NCICU
Chris Kardish	AP
Kim Crouch	NCBA
David Hall	NCBA
Thomas C. Caves, Jr.	NCSBI
Chris Dunsta	SOS
George Smith	NP
Laurie Annis	FSP
Susan Vick	FSP

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

May 30, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	Conf. of DAs
Amber Barwick	Conf. of DAs
Johanna Reese	NCACC
Chris Killian	Nelson Mullins
Elaine Woo	NCLM
Mike Smallwood	SOG Daily Bulletin
John Del Grosso	Brubaker & Assoc.
Mark Blah	NCBAA
Cassandra Stanley	NCACC
Mildred Spearman	NCAOC

Senate Committee on Judiciary II
Tuesday, June 4, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 24	DV Abuser Treatment Program/Notifications.	Rep. T. Moore
HB 25	Amend Felony Breaking or Entering.	Rep. T. Moore
HB 456	DV Fatality Review Team/Mecklenburg Co.	Rep. Carney Rep. Bryan Rep. Cunningham Rep. Jeter
HB 585	PREA Compliance.	Rep. Lewis
HB 597	Bail Bondsman Credentials/Official Shield.	Rep. Malone Rep. Moffitt Rep. Faircloth
HB 762	Amend Certain Bail Bond Procedures.	Rep. Hardister Rep. Faircloth Rep. Turner Rep. Wray

Adjournment

Senate Judiciary II Committee
Wednesday, June 4, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on June 4, 2013 in room 1124 of the Legislative Building. Kevin Treacy of Oxford, Carol Ann Schwarzenbach of Jacksonville, Caitlyn Ebert of Hickory, Becca Wilkins of Clayton, Amelia Mangan of Granite Falls, Mary Catherine Starnes of Hickory and Alex Stroud of Aberdeen served as pages. Senator Allran presided as chair.

H.B. 24 – DV/Abuser Treatment Program/Amendments

Representative Moore was recognized to explain the bill and answer questions. Senator McKissick moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would specify the process for notifying an abuser treatment program if a probationer is directed to attend and the notification process if the probationer fails to attend or is discharged for violating program rules. It would also eliminate the requirement for review hearings every 60 days for defendants on unsupervised probation who are ordered into a treatment program. Senator Daniel moved to amend the PCS to change the effective dates and moved for its adoption. The motion carried. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the amendment is attached.

H.B. 25 – Amend Felony Breaking or Entering

Representative Moore explained the bill which would add a new offense to the State's felony breaking and entering laws. Hal Pell, an attorney with the Research Division, was recognized to answer questions. Senator Bryant moved for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note is attached.

H.B. 456 – DV Fatality Review Team/Mecklenburg Co.

Representative Carney was recognized to explain the bill. Senator Randleman moved to adopt the PCS for discussion and the motion carried. The PCS would amend the membership of the Mecklenburg County Domestic Violence Review Team, membership eligibility rules, and the Team's reporting requirements. It also creates the program in Pitt and Alamance counties. Mr. Pell was recognized to answer questions. Senator Cook moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 585 – PREA Compliance

Representative Lewis was recognized to explain the bill which would provide that all State correctional facilities (including juvenile facilities) shall comply with the Prison Rape Elimination Act. Senator Daniel was recognized to offer an amendment which would add county jails to the bill. Gregg Stahl, NC Sheriffs' Association, was recognized to speak in opposition to the amendment. Charlotte Williams, PREA Manager at the Department of Public Safety, was recognized to answer questions. Senator Daniel moved to adopt the amendment and the motion carried. Then Senator Daniel moved for a favorable report and the motion carried. A copy of the bill, the summary, the amendment, and the fiscal note is attached.

Due to time limitations, these bills were not heard:

H.B. 597 – Bail Bondsman/Official Shield
H.B. 762 – Amend Certain Bail Bond Procedures

The meeting adjourned at 10:59 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 4, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 24	DV Abuser Treatment Program/Notifications.	Representative T. Moore
HB 25	Amend Felony Breaking or Entering.	Representative T. Moore
HB 456	DV Fatality Review Team/Mecklenburg Co.	Representative Carney Representative Bryan Representative Cunningham Representative Jeter
HB 585	PREA Compliance.	Representative Lewis
HB 597	Bail Bondsman Credentials/Official Shield.	Representative Malone Representative Moffitt Representative Faircloth
HB 762	Amend Certain Bail Bond Procedures.	Representative Hardister Representative Faircloth Representative Turner Representative Wray

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, June 04, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

HB **25** Amend Felony Breaking or Entering.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

HB **456** DV Fatality Review Team/Mecklenburg Co.
Draft Number: H456-PCS10417-RK-63
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

HB **24** **(CS#1)** DV Abuser Treatment Program/Notifications.
Draft Number: H24-PCS30567-RK-62
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

HB **585** **(CS#1)** PREA Compliance.
Draft Number: H585-PCS70441-RK-64
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Senator Warren Daniel will handle HB 25
Senator Warren Daniel will handle HB 456
Senator Warren Daniel will handle HB 24
Senator Malcolm Graham will handle HB 585

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 24
Committee Substitute Favorable 2/11/13
Third Edition Engrossed 2/13/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H24-CSRK-62 [v.2]
6/3/2013 2:32:52 PM

Short Title: DV/Abuser Treatment Program/Amendments. (Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURES FOR PERSONS ON PROBATION WHO ARE DIRECTED TO PARTICIPATE IN AN ABUSER TREATMENT PROGRAM AND MAKE CLARIFYING CHANGES RELATING TO DOMESTIC VIOLENCE OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(b) reads as rewritten:

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

...

(12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice. A defendant attending an abuser treatment program shall abide by all of the rules of the program. ~~If the defendant is discharged from the program for failure to comply with the program or its rules, such noncompliance shall be reported to the court.~~

a. If the defendant is placed on supervised probation, the following procedures apply:~~probation and is discharged from the program for failure to comply with the program or its rules, such noncompliance shall be reported to the court. The~~

1. The probation officer shall forward a copy of the judgment, including all conditions of ~~probation~~probation, to the abuser treatment program. ~~program, and the abuser treatment~~

2. The program shall notify the probation officer if the defendant fails to participate in the program or if the defendant is discharged from the program for violating any of the program rules. ~~of any violations of program rules by the defendant.~~

3. If the defendant fails to participate in the program or is discharged from the program for failure to comply with the program or its rules, the probation officer shall file a violation report with the court and notify the district attorney of such noncompliance.

b. If the defendant is placed on unsupervised probation, the following procedures apply:

1. The defendant shall be required to notify the district attorney and the abuser treatment program of their choice of program within 10 days of the judgment.

2. The district attorney shall forward a copy of the judgment, including all conditions of probation, to the abuser treatment program.

3. If the defendant fails to participate in the program or is discharged from the program for failure to comply with the program or its rules, the program shall notify the district attorney of such noncompliance.

...

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), (13), (14), and (15) of this subsection. ~~If a defendant placed on unsupervised probation is subject to the condition contained in subdivision (12) of this subsection, the court shall schedule a compliance review hearing within 60 days of judgment and every 60 days thereafter until the defendant completes the abuser treatment program.~~"

SECTION 2. Section 3 of S.L. 2012-39 reads as rewritten:

"**SECTION 3.** This act becomes effective December 1, ~~2012,~~2012. ~~and~~ Section 1 of this act applies to defendants placed on probation on or after that date. Section 2 of this act applies to judgments entered on or after that date."

SECTION 3. This act is effective when it becomes law. Section 1 applies to all defendants placed on supervised or unsupervised probation prior to, on, or after the effective date of this act.

HOUSE BILL 24:
DV/Abuser Treatment Program/Amendments.

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 3, 2013
Introduced by:	Rep. T. Moore	**Prepared by:**	Hal Pell
Analysis of:	PCS to Third Edition H24-CSRK-62		Committee Counsel

SUMMARY: ***House Bill 24 specifies the process for notifying an abuser treatment program if a probationer is directed to attend, and the notification process if the probationer fails to attend or is discharged for violating program rules. The act also eliminates the requirement for review hearings every sixty days for defendants on unsupervised probation who are ordered into a treatment program.***

CURRENT LAW: General Statute 15A-1343(b) requires that a defendant's discharge from an abuser treatment program be reported to the court and provides for periodic compliance review hearings for defendants ordered to treatment who are on unsupervised probation.

BILL ANALYSIS:

Section 1: The act specifies that for:

- Defendants on supervised probation, the probation officer notifies the abuser treatment program of the judgment and any conditions of probation. The program must notify the probation officer if the defendant fails to participate or violates program rules.
- Defendants on unsupervised probation, the defendant must notify the district attorney and the abuser treatment program of their choice of program within 10 days of the judgment. The district attorney notifies the abuser treatment program of the judgment and any conditions of probation. The program is required to notify the district attorney if the defendant fails to participate in the program or if the defendant is discharged for noncompliance with program rules.

The bill eliminates the requirement of compliance review hearings every 60 days for defendants on unsupervised probation.

Section 2:

The act also makes a technical correction in Session law 2012-39.

- In Section 1 of Session Law, 2012-39, it had provided for the discharge from abuser treatment programs for noncompliance, and for notification to the probation officer. The amendment clarifies that this portion of the Session Law applied to offenders placed on probation on or after the effective date.
- The second section of S.L. 2012-39 had required a court to note on a judgment if the person had committed any offense that would have allowed for a protective order under Chapter 50B. The amendment clarifies that this section applies to judgments entered on or after the effective date of that act.

EFFECTIVE DATE: The act is effective when it becomes law and applies to defendants placed on supervised or unsupervised probation prior to, on, or after the effective date of the act.

O. Walker Reagan
Director

H24-SMRK-96 CSRK-62 -V3

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 24

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

H24-ARK-48 [v.2]

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

Date _____,2013

Senator _____

moves to amend the bill on page 2, lines 25 through 27, by rewriting the lines to read:

"**SECTION 3.** Section 1 of this act is effective December 1, 2013, and applies to defendants placed on supervised or unsupervised probation on or after that date. The remainder of this act is effective when it becomes law." and

On page 2, line 5, by rewriting the line to read:

"within 10 days of the judgment if the program has not previously been selected.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 1

HOUSE BILL 25

Short Title:	Amend Felony Breaking or Entering.	(Public)
Sponsors:	Representative T. Moore (Primary Sponsor).	
	For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.	
Referred to:	Judiciary Subcommittee C.	

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FELONY OFFENSE OF BREAKING OR ENTERING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-54 reads as rewritten:

"**§ 14-54. Breaking or entering buildings generally.**

(a) Any person who breaks or enters any building with intent to commit any felony or larceny therein shall be punished as a Class H felon.

(a1) Any person who breaks or enters any building with intent to terrorize or injure an occupant of the building is guilty of a Class H felony.

(b) Any person who wrongfully breaks or enters any building is guilty of a Class 1 misdemeanor.

(c) As used in this section, "building" shall be construed to include any dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 25:
Amend Felony Breaking or Entering

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 30, 2013
Introduced by:	Rep. T. Moore	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act would add a new offense to the State's felony breaking and entering laws. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.***

CURRENT LAW:

It is a Class H felony if a person breaks into and enters a building with the intent to commit any felony or larceny.

BILL ANALYSIS:

The act would make it a Class H felony to break into a building with the intent to terrorize or injure an occupant. There term "terrorizing" is used in other criminal law statutes, e.g., G.S. 14-39 (kidnapping), G.S. 14-277.3 (stalking).

In *State v. Davis*, 340 N.C. 1 (1995), the N.C. Supreme Court explained that under the kidnapping statute, "terrorizing" requires more than just putting another in fear; it means putting that person "in some high degree of fear, a state of intense fright or apprehension." The test is not subjective, i.e., whether the victim was in fact terrorized; rather, the evidence must support a finding that the defendant's purpose was to terrorize the victim.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

H25-SMRK-92 E1 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 25 (First Edition)

SHORT TITLE: Amend Felony Breaking or Entering.

SPONSOR(S): Representative T. Moore

FISCAL IMPACT

($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Department of Public Safety, Office of Indigent Defense Services

EFFECTIVE DATE: December 1, 2013

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:
This bill may have a fiscal impact. However, the Fiscal Research Division cannot estimate the cost of this bill because we cannot estimate how many people may be charged with this crime. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: $501 per disposition
- Indigent Defense Services: $235 in district court
  $446 in superior court without a trial
  $1,180 in superior court with a trial
- Community Corrections: $3.63 per day of suspension for a minimum of nine months

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:
This bill creates a new Class H felony by adding subsection (a1) to G.S. 14-54, Breaking or entering buildings generally. G.S. 14-54(a1) provides that it shall be a Class H felony for any person to break or

enter any building with intent to terrorize or injure an occupant of the building. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations

Based on FY 2011-12 data and changes under the JRA, it is estimated that 35% of Class H convictions will result in active sentences with an average estimated time served of 10 months. If, for example, there were three Class H convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of PRS follows release from prison for offenders convicted of Class H felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Some of the conduct prohibited by G.S. 14-54(a1) may also be covered under G.S. 14-221, Breaking or entering jails with intent to injure prisoners. This offense is a Class F felony. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-221. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

In calendar year 2012, approximately 612 defendants were charged with the Class H felony of violating G.S. 14-54(a), breaking or entering any building with intent to commit a felony or larceny, and 386 defendants charged with the Class 1 misdemeanor of violating G.S. 14-54(b), wrongfully breaking or entering any building. AOC does not have data on the specifics of these incidents to determine how many cases included intent to terrorize or injure an occupant and thus may be prosecuted under proposed G.S. 14-54(a1). AOC is not able to estimate the frequency of this new offense. It is also possible that some of these

defendants may currently be charged under G.S. 14-10.1 (terrorism), however, this is a new offense and AOC does not currently have an offense code for this statute. The Class H felonies in this bill will represent new charges in superior court, and district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for the offenses increased. The cost per disposition for a Class H felony is $501. AOC states that any increase in workload could not be absorbed by existing staff, and that any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a new Class H felony will result in an increase of $235 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class H offense would be $446 if the case does not go to trial and $1,180 if it does.

Department of Public Safety–Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,[1] and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). As shown, the Sentencing Commission cannot provide an estimate of the number of inmates added to the prison system by the end of FY 2014-15 from this specific legislation.

Population Projections and Bed Capacity
Five Year Impact

	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates[2]	38,999	39,062	39,091	39,047	39,135
2. Prison Beds (Expanded Capacity)	40,926	40,926	40,926	40,926	40,926
3. Beds Over/(Under) Inmate Population	(1,927)	(1,864)	(1,835)	(1,879)	(1,791)
4. Additional Inmates Due to this Bill[3]	***No estimate available***				
5. Additional Beds Required					

[1] Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

[2] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2012.

[3] Criminal penalty bills effective December 1, 2013, should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Department of Public Safety – Community Correction Section

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[4] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 39% of Class H offenders received active sentences; 45% received intermediate sentences; and 16% received community punishments. All active sentences will result in nine months of post-release supervision (PRS). The average lengths of intermediate and community punishment imposed for this offense class were 30 and 27 months, respectively. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of PRS. The cost of nine months of PRS is $980 per offender ($3.63 per day times 270 days).[5]

SOURCES OF DATA: Department of Public Safety; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: William Childs

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: February 6, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

[4] DCC incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

[5] Due to the effective date of December 1, 2012, and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2012-13. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2013-14.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 456
PROPOSED SENATE COMMITTEE SUBSTITUTE H456-CSRK-63 [v.1]

6/3/2013 1:55:18 PM

Short Title: DV Fatality Review Team/Mecklenburg Co. (Local)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT CONCERNING MEMBERSHIP ON THE DOMESTIC VIOLENCE REVIEW TEAM IN MECKLENBURG COUNTY AND ESTABLISHING A DOMESTIC VIOLENCE REVIEW TEAM IN PITT COUNTY AND ALAMANCE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (c) of Section 1 of S.L. 2009-52 reads as rewritten:

"**SECTION 1.(c)** Composition. – The Review Team shall consist ~~of~~ of: (i) a lead ~~agency, Community Support Services of Charlotte, North Carolina,~~ agency that has experience working with victims of domestic violence and (ii) representatives of public and nonpublic agencies in the community that provide services to victims or families of domestic ~~violence, including:~~violence. No person who has been convicted of a domestic violence-related crime or who has been a participant in a batterer intervention program shall be a member of the Review Team. The Board of County Commissioners shall designate the lead agency for the Review Team. The members of the Review Team shall include all of the following:

(1) A representative from a domestic violence victim's service ~~group.~~group who shall be appointed by the lead agency pursuant to subdivision (7) of subsection (d) of this section.

(2) Two survivors of domestic ~~violence.~~violence who shall be appointed by the lead agency pursuant to subdivision (7) of subsection (d) of this section.

~~(2)~~(3) ~~An attorney from the local district attorney's office.~~The District Attorney from the appropriate prosecutorial district or an assistant district attorney designated by the District Attorney.

~~(3)~~(4) ~~Local law enforcement personnel.~~ A local law enforcement officer appointed by the chief of the local police department of the largest municipality in the county and at least one law enforcement officer from the other police departments in the County appointed jointly by the Chiefs of Police of the other municipalities in the county.

(5) The Sheriff of the County or a person designated by the Sheriff.

~~(4)~~(6) ~~A representative from the local medical examiner's office.~~The Medical Examiner of the County or a person designated by the Medical Examiner.

~~(5)~~(7) ~~A representative from the local department of social services.~~The Director of the Department of Social Services or a person designated by the Director.

~~(6)~~(8) ~~A representative from the local health department.~~The Director of the County Health Department or a person designated by the Director.

~~(7)~~(9) ~~A representative from an area mental health authority.~~The Director of the local mental health managed care organization or a person designated by the Director.

~~(8)~~(10) ~~A representative from the local public schools.~~The Superintendent of the Public Schools or a person designated by the Superintendent.

~~(9)~~(11) A representative from ~~a health care system.~~each of the primary health care systems in the county.

~~(10)~~(12)~~Local medic or emergency services personnel~~ A magistrate designated by the Chief District Court Judge.

~~(11)~~(13)~~A survivor of domestic violence.~~ A representative of an institution of higher education appointed by the Board of County Commissioners.

(14) A probation and parole officer who supervises probationers convicted of domestic violence appointed by the chief probation and parole officer of the Judicial District.

(15) A district court judge who presides over domestic violence cases designated by the Chief District Court Judge.

(16) At the option of the Board of County Commissioners, the Board may appoint not more than two additional representatives from the community who have knowledge, experience, or expertise in preventing domestic violence."

SECTION 2. Section 2 of S.L. 2009-52 is repealed.

SECTION 3. Section 3 of S.L. 2009-52 reads as rewritten:

"**SECTION 3.** Each Review Team established pursuant to this act shall ~~issue an interim~~ issue a report to the local board of county commissioners, the North Carolina Domestic Violence Commission, and the Governor's Crime Commission summarizing its findings and activities ~~by June 15, 2011, and a final report with~~ and making recommendations for action by June 15, ~~2014.~~2014, and every three years thereafter. The reports shall not identify the specific cases or case reviews that led to the individual Review Team's findings and recommendations."

SECTION 4. Section 5 of S.L. 2009-52 reads as rewritten:

"**SECTION 5.** This act applies to ~~Mecklenburg County only.~~ Alamance County, Pitt County, and Mecklenburg County."

SECTION 5. This act applies to the following counties: Alamance. Pitt, and Mecklenburg.

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

HOUSE BILL 456:
DV Fatality Review Team/Mecklenburg Co

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 3, 2013
Introduced by:	Reps. Carney, Bryan, Cunningham, Jeter	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition H456-CSRK-63		Committee Counsel

SUMMARY: ***This act amends the membership of the Mecklenburg County Domestic Violence Review Team (DVRT), membership eligibility rules, and the Team's reporting requirements. It also creates a DVRT in Pitt and Alamance counties. This act is effective when it becomes law.***

BILL ANALYSIS:

- Amends Section 1(c) of S.L. 2009-52 regarding the composition of the Review Team as follows:
- Deletes the reference to Community Support Services of Charlotte, NC as the lead agency for the Review Team and provides instead that the lead agency shall be an agency that has experience working with victims of domestic violence and shall be designated by the Board of County Commissioners.
- Provides that no person who has been convicted of a domestic violence-related crime or who has been a participant in a batterer intervention program may be a member of the Review Team.
- Amends the membership of the Review Team as follows:
  - Continues to require that a representative from a domestic violence group be a member, but provides that the representative shall be designated by the lead agency pursuant to the procedures and criteria develop by the lead agency pursuant to Section 1.(d)(7) which authorizes the lead agency to develop standard operating procedures for appointing Review Team members and a chair.
  - Increases the number of survivors of domestic violence who must be members of the Review Team from one member to two members and also provides that these two members shall be appointed by the lead agency.
  - Continues the membership requirement for a representative from the District Attorney's Office but specifically requires that the member is either the District Attorney or an assistant district attorney designated by the District Attorney.
  - Continues the membership requirement for a local law enforcement officer. Modifies that requirement as it appears in SL 2009-52 by requiring that two law enforcement officers be appointed; one by the chief of the local police of the largest municipality in the county and a second officer appointed jointly by the chiefs of police of the other municipalities in the county.
  - Adds the Sheriff or the Sheriff's designee as a member.
  - Continues the membership requirement for a representative from the local medical examiner's office but now specifically requires the member is the County Medical Examiner or a designee.

- Continues the membership requirement for a representative from the local social services department but now specifically requires that the member is the Director of Social Services or a designee.
- Continues the membership requirement for a representative from the local health department but now specifically requires that the member is the Director of the County Health Department or a designee.
- Continues the membership requirement for a representative from the local mental health managed care organization or designee, but now specifically requires that the member is the Director or a designee.
- Continues the membership requirement for a representative from the local public schools but now specifically requires the Superintendent of the Public Schools or a designee.
- Continues the membership requirement for a representative from each of the primary health care systems in the county, but now requires a representative from each of the primary health care systems.
- Deletes the membership requirement for a representative who is a local medic or emergency service personnel.
- Adds a new membership requirement for a magistrate to be designated by the Chief District Court Judge.
- Adds a new membership requirement for a representative of an institution of higher education to be appointed by the Board of County Commissioners.
- Adds a new membership requirement for a probation and parole officer who supervises probationers convicted of domestic violence related crimes, to be appointed by the Chief Probation and Parole Officer of the Judicial District.
- Adds a new membership requirement for a district court judge who presides over domestic violence cases, to be designated by the Chief District Court Judge
- Adds a new optional membership that may be exercised by the Board of County Commissioners for two additional representatives from the community who are knowledgeable about preventing domestic violence

- Repeals the provision in S.L. 2009-52 which terminates the Mecklenburg County Domestic Violence Review Team after it makes its final report or by June 15, 2014, thus making the Review Team an ongoing entity.
- Amends the reporting requirement for the Review Team to require a report to the local board of county commissioners, the NC Domestic Violence Commission, and the Governors Crime Commission by June 15, 2014 and every three years thereafter.
- As noted above, expands the counties that may establish a Domestic Violence Review Team to include Alamance and Pitt County in addition to Mecklenburg County.
- The act is effective when it becomes law.

Emily Johnson, Staff Attorney, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 585
Committee Substitute Favorable 5/1/13
Third Edition Engrossed 5/8/13

Short Title: PREA Compliance. (Public)

Sponsors:

Referred to:

April 8, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ALL CORRECTIONAL FACILITIES AND JUVENILE FACILITIES IN THIS STATE SHALL COMPLY WITH THE PROVISIONS OF THE FEDERAL PRISON RAPE ELIMINATION ACT (PREA).

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-25.1. Compliance with the federal Prison Rape Elimination Act.**

All correctional facilities in the State prison system shall be in compliance with the federal Prison Rape Elimination Act (PREA), Public Law 108-79."

SECTION 2. Subpart C of Part 3 of Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-822. Compliance with the federal Prison Rape Elimination Act.**

All juvenile facilities in the State shall be in compliance with the federal Prison Rape Elimination Act (PREA), Public Law 108-79."

SECTION 3. This act becomes effective August 1, 2013.

HOUSE BILL 585: PREA Compliance

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 3, 2013
Introduced by:	Rep. Lewis	**Prepared by:**	Hal Pell
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 585 would provide that all State correctional facilities (includes juvenile facilities) shall comply with the Prison Rape Elimination Act (PREA). This act is effective when it becomes law.***

BACKGROUND:

- The Prison Rape Elimination Act created a commission that has developed standards for compliance for all State facilities (including juvenile facilities). Local government confinement facilities must comply with the standards unless doing so would incur "substantial" costs.
- There is no separate cause of action under PREA if a prisoner is harmed and the facility did not comply with an applicable standard. However, the prisoner would likely file an action under 42 U.S.C. 1983, claiming a violation of rights, and point to noncompliance with an applicable PREA standard if the noncompliance was a contributing cause of the violation.
- Beginning in August 2013, the Governor of each state must certify compliance with standards that are applicable to State confinement facilities (those under the operational control of the Executive Branch). A failure to meet the certification requirement could result in a loss of 5% of federal funds for correctional uses.

BILL ANALYSIS:

House Bill 585 would require the State correctional system, including all juvenile facilities, to comply with the provisions of the federal Prison Rape Elimination Act (PREA).

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 585

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

H585-ARK-47 [v.1]

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

Date _____,2013

Senator Daniel

moves to amend the bill on page 1, between lines 15 and 16, by inserting the following:

"**SECTION 3.** G.S. 153A-216 reads as rewritten:
"**§ 153A-216. Legislative policy.**
The policy of the General Assembly with respect to local confinement facilities is:

. . .

(2) Minimum statewide standards should be provided to guide and assist local governments in planning, constructing, and maintaining confinement facilities and in developing programs that provide for humane treatment of prisoners and contribute to the rehabilitation of offenders. Local confinement facilities should comply with federal standards and regulations applicable to such facilities under the Prison Rape Elimination Act (PREA), Public Law 108-79.

. . . ."."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 585 (Second Edition)

SHORT TITLE: PREA Compliance.

SPONSOR(S): Representative Lewis

FISCAL IMPACT

($ in millions)

☐ Yes ☐ No ☑ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

Local Impact					
Revenues:					
Expenditures:					
NET LOCAL IMPACT	Likely budget savings. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE August 1, 2013

TECHNICAL CONSIDERATIONS:

None

BILL SUMMARY:

The bill mandates that all correctional, juvenile, and local confinement facilities in North Carolina comply with the requirements of the Prison Rape Elimination Act (PREA). PREA was enacted by Congress is 2003 to address the problem of sexual abuse of persons in the custody of correctional agencies.

The final PREA rules became effective August 20, 2012. The Governor must certify that the Department of Public Safety (DPS) is in compliance by September 2013, or face a loss of federal funds. The rules require that the first one third of facilities must be audited for compliance by August 2014. If the Governor does not certify full compliance with the PREA standards the State is subject to the loss of five percent of US Department of Justice funds.

There is no cost for DPS because the Department has been compliant with PREA since its inception.

Counties have until 2017 to come into compliance with PREA mandates. The impact on the counties cannot be determined.

ASSUMPTIONS AND METHODOLOGY:

SOURCES OF DATA: NC Department of Public Safety

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: John Poteat

APPROVED BY:
Mark Trogdon, Director
Fiscal Research Division

DATE: May 2, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE PAGES ATTENDING

COMMITTEE: Judiary II ROOM: 1124

DATE: 6-4 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Kevin Treacy	Oxford	McKissick
2. Carol Ann Schwarzenbach	Jacksonville	Brown
3. Caitlyn Ebert	Hickory	Hayden
4. Becca Wilkins	Clayton	Newton
Amelia Mangan	Granite Falls	Soucek
6. Mary Catherine Starnes	Hickory	Soucek
7. Alex Stroud	Aberdeen	Tillman
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 06/04/13 ROOM: 1124

1. HAL ROACH
2. ROBERT YOUNG
3. ASHLEY MICKENS
4. BILLY FRITSCHER

VISITOR REGISTRATION SHEET

Senate J II Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	RCG
Brandy Bynum	AFC NC
[illegible]	Duke Energy
Debbie Hughes	KLG
Gregg Stahl	NC Sheriffs Assoc
Gabrielle Rhoades	NCDPS
[illegible]	NCDPS
Jarret Burr	NCDPS
[illegible]	NCACC

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 4, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Todd Barlow	NC Advocates for Justice
Reggie Harkey	BAIL/LEWISMIRE
MIKE MANN	NCBAA
SCOTT SCHERR	CITIZEN
Ryan Combs	NCDPS
Shekeira Ward	NCCASA
Elaine Woo	NCLM
Alissa Willett	NCACC
SAM SKINNER	NCACC
Bill Rowe	NC Justice Center
DALLAS McCLEAN	LBANC

VISITOR REGISTRATION SHEET

Senate J II Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rose Williams	NCDOJ
Mike Smallwood	SOG
Colleen Kotowski	NCCADV
Tom Vitaglione	ASC
Jim Harrell	~~DOT~~
Dana Sipes	SLT
Craig Lloyd	FHK
Mary Miller	KLG
Annaliese Dolph	Dolph Law
Keith Tatem	CBail Bond
Andrew Coyle	NC Sheriffs' Assn.
Sarah Preston	ACLU-NC
Saba Perdue	Sentencing Comm.
Jane Rundell	NC Drug Policy Council

Name

Firm, Agency,
Address

VISITOR REGISTRATION SHEET

Senate J II Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Holly West	NC Health News
Michele Luecking-Swanson	NCPLS Raleigh, NC
Amanda Bernier	NCPLS Raleigh, NC
Daniel Baum	Troutman Sanders
Barbara More	Cnty Clerks of Sp Ct
Peg Dorer	Conf. of DAs
Mildred Spearman	NCAOC
Deborah McSwain	NCDPS
Charlotte Williams	NCDPS
Angelica Giddens	Action for Children NC
Sarah Woolfe	MWC LLC
Erin Gibbs	NCCASA
Murphie Chapman	NCCADV

Senate Committee on Judiciary II
Thursday, June 6, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 209	Amend Domestic Violence/Civil No-Contact Laws.	Rep. Stevens Rep. T. Moore
HB 219	Update References/Child Born Out of Wedlock.	Rep. Glazier Rep. Stam Rep. Faircloth Rep. Michaux
HB 331	HOAs/Uniform Lien Procedure.	Rep. Bryan Rep. Stam
HB 597	Bail Bondsman Credentials/Official Shield.	Rep. Malone Rep. Moffitt Rep. Faircloth
HB 762	Amend Certain Bail Bond Procedures.	Rep. Hardister Rep. Faircloth Rep. Turner Rep. Wray

Adjournment

Senate Judiciary II Committee
Thursday, June 6, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, June 6, 2013 in room 1124 of the Legislative Building. Jordan Smith of Henderson, Carol Ann Schwarzenbach of Jacksonville, Anjan Sapasetty of Cary, Amelia Mangan of Granite Falls, Mary Catherine Starnes of Hickory and Alex Stroud of Aberdeen served as pages. Senator Daniel presided as chair.

H.B. 209 – Amend Domestic Violence/Civil No Contact Laws

Senator Daniel was recognized to explain the bill and answer questions. Senator McKissick moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would allow the parties in a domestic violence protective order proceeding to consent to a protective order which does not include findings of fact or conclusions of law. It also would provide for attorneys' fees and costs in certain circumstances in civil no-contact order cases. David Holm, the Family Law Director of the NC Bar Association, and Alex Miller, an Attorney with the NC Coalition Against Domestic Violence, spoke in favor of the bill. Senator Randleman moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

H.B. 597 – Bail Bondsman/Official Shield

Representative Malone was recognized to explain the bill and Senator Davis moved to adopt the PCS for discussion. The motion carried. The PCS would authorize an official shield for persons licensed pursuant to the bail bondsmen and runners licensure statute. Hal Pell, an Attorney with the Research Division, was recognized to answer questions. Mike Mann, representing the NC Bail Agents Association, was recognized to speak in favor of the bill. Senator McKissick moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

H.B. 762 – Amend Certain Bail Bond Procedures

Representative Hardister was recognized to explain the bill. It would treat a bail bond signed by a professional bondsman, who is not a bail agent, the same as a cash deposit and would require a surety to provide a copy of the bond, forfeiture, or release order to the sheriff before surrendering a defendant to a sheriff. It would also dispense with the requirement that the clerk of court serve the district attorney and the attorney for the county board of education with a copy of a motion to set aside a forfeiture of the bail bond. Lynn Thompson, an Instructor for bail bond licensing, was recognized to answer questions. Senator Cook moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 219 – Update references/Child Born Out of Wedlock

Representative Stam was recognized to explain the bill. Senator Randleman moved to adopt the PCS for discussion and the motion carried. The PCS would change references to illegitimate children and illegitimate intestates with references to children or intestates "Born out of wedlock" and make other technical corrections. It would allow a child born out of wedlock to inherit from and to receive a year's allowance from a person who died prior to or within one year

after the birth of that child if paternity can be established by DNA testing. Senator Davis moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

H.B. 331 – HOAs/Uniform Lien Procedure

Representative Bryan was recognized. Senator Cook moved to adopt the PCS for discussion and the motion carried. The PCS would provide a uniform procedure to enforce claims of lien securing sums owed to condominium and planned community associations. Hope Carmichael, an Attorney with the NC Bar Association, was recognized to speak in favor of the bill and answer questions. Senator McKissick moved for a favor report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 10:59 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 6, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 209	Amend Domestic Violence/Civil No-Contact Laws.	Representative Stevens Representative T. Moore
HB 219	Update References/Child Born Out of Wedlock.	Representative Glazier Representative Stam Representative Faircloth Representative Michaux
HB 331	HOAs/Uniform Lien Procedure.	Representative Bryan Representative Stam
HB 597	Bail Bondsman Credentials/Official Shield.	Representative Malone Representative Moffitt Representative Faircloth
HB 762	Amend Certain Bail Bond Procedures.	Representative Hardister Representative Faircloth Representative Turner Representative Wray

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, June 06, 2013

Senator Daniel,
submits the following with recommendations as to passage:

FAVORABLE

HB **762** Amend Certain Bail Bond Procedures.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Fletcher Hartsell will handle HB 762

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, June 10, 2013

Senator Daniel,
submits the following with recommendations as to passage:

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

HB **209** Amend Domestic Violence/Civil No-Contact Laws.
Draft Number: H209-PCS10424-RK-66
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

HB **219** **(CS#1)** Update References/Child Born Out of Wedlock.
Draft Number: H219-PCS10429-RV-46
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

HB **331** **(CS#1)** HOAs/Uniform Lien Procedure.
Draft Number: H331-PCS30571-RV-45
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **597** **(CS#1)** Bail Bondsman Credentials/Official Shield.
Draft Number: H597-PCS10425-RK-57
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Senator Warren Daniel will handle HB 209
Senator James Davis will handle HB 219
Senator Warren Daniel will handle HB 331
Senator Fletcher Hartsell will handle HB 597

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 209
PROPOSED SENATE COMMITTEE SUBSTITUTE H209-CSRK-65 [v.2]

6/5/2013 3:33:18 PM

Short Title: Amend Domestic Violence/Civil No-Contact Laws. (Public)

Sponsors:

Referred to:

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PERTAINING TO DOMESTIC VIOLENCE AND CIVIL NO-CONTACT ORDERS.

The General Assembly of North Carolina enacts:

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

"(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, including the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(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.

b1. Cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

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.

A consent protective order may be entered pursuant to this Chapter without findings of fact and conclusions of law if the parties agree in writing that no findings of fact and conclusions of law will be included in the consent protective order. The consent protective order shall be valid and enforceable and shall have the same force and effect as a protective order entered with findings of fact and conclusions of law."

SECTION 2. G.S. 50C-2(b) reads as rewritten:

"(b) No court costs shall be assessed against the plaintiff for the filing or service of the complaint, or the service of any ~~orders.~~orders, and no attorneys' fees shall be assessed against the plaintiff, unless prior to assessing any costs or attorneys' fees, the court finds from evidence presented to the court that the plaintiff (i) was not a victim of unlawful conduct, (ii) filed the action knowing that he or she was not the victim of unlawful conduct, and (iii) initiated the action for an improper purpose to harass the defendant. The failure to comply with procedural requirements in this Chapter shall not be the basis for a finding that the plaintiff was not a victim."

SECTION 3. G.S. 50C-5(b)(7) reads as rewritten:

"(b) The court may grant one or more of the following forms of relief in its orders under this Chapter:

...

(7) Order other relief deemed necessary and appropriate by the ~~court.~~court, including assessing attorneys' fees to either party."

SECTION 4. Section 1 of this act is effective October 1, 2013, and applies to orders entered on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 209:
Amend Domestic Violence/Civil No-Contact Laws

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 5, 2013
Introduced by:	Reps. Stevens, T. Moore	**Prepared by:**	Hal Pell
Analysis of:	PCS to First Edition H209-CSRK-65		Committee Counsel

SUMMARY: ***This act allows the parties in a domestic violence protective order proceeding under Chapter 50B to consent to a protective order which does not include findings of fact or conclusions of law, and also provides for attorneys' fees and costs in certain circumstances in a civil no-contact order case pursuant to Chapter 50C.***

CURRENT LAW:

- Generally, pursuant to the Rules of Civil Procedure, a court order must include findings of fact and conclusions of law in its order. [An exception is an *ex parte* protective order in a domestic violence case].
- Chapter 50C (which provides for the entry of a civil no-contact order) has a general provision allowing the court to order relief deemed necessary and appropriate; however, it has no statutory provision for attorneys' fees (unlike Chapter 50B).
- Chapter 50C provides that no costs shall be assessed for the filing or service of the complaint, or the service of any orders.

BILL ANALYSIS: This act

- Authorizes a court, with the written consent of the parties, to enter a consent protective order in a Chapter 50B proceeding without findings of fact and conclusions of law. The order would have the same force and effect as an order with findings of fact and conclusions of law.
- Specifically authorizes a court to award attorneys' fees to either party in a civil no-contact order proceeding under Chapter 50C.
- Limits assessment of court costs and attorneys' fees against the plaintiff; may be assessed only if the court finds from evidence presented to the court that the person (i) was not a victim of unlawful conduct, (ii) filed the action knowing that he or she was not a victim, and (iii) initiated the action for an improper purpose to harass the defendant.

EFFECTIVE DATE: This act applies to orders entered on or after October 1, 2013. The remainder of the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 597
Committee Substitute Favorable 4/18/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H597-CSRK-57 [v.3]
5/23/2013 12:18:05 PM

Short Title: Bail Bondsman/Official Shield. (Public)

Sponsors:

Referred to:

April 9, 2013

A BILL TO BE ENTITLED

AN ACT TO APPROVE AN OFFICIAL SHIELD FOR BAIL BONDSMEN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-40 is amended to add a new subsection to read:

"(d1) While engaged in official duties, a licensee is authorized to carry, possess, and display a shield as described in this subsection. The shield shall fulfill all of the following requirements:

(1) Be an exact duplicate in size, shape, color, and design of the shield approved under G.S. 74C-5(12) and pictured in 12 NCAC 07D. 0405 on May 1, 2013.

(2) Include the licensee's last name and corresponding license number in the same locations as the shield referenced in subdivision (1) of this subsection.

(3) With reference to the shield described in subdivision (1) of this subsection, in lieu of the word "Private," the shield shall have the words "North Carolina," and in lieu of the word "Investigator," the shield shall have the words "Bail Agent."

Any shield that deviates from the design requirements as specified in this section shall be an unauthorized shield and its possession by a licensee shall constitute a violation of the statute by the licensee."

SECTION 2. This act is effective when it becomes law and applies to any person licensed pursuant to G.S. 58-71-40 before, on, or after that date.

HOUSE BILL 597:
Bail Bondsman Credentials/Official Shield

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 30, 2013
Introduced by:	Reps. Malone, Moffitt, Faircloth	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	PCS to Second Edition H597-CSRK-57		

SUMMARY: ***This act authorizes an official shield for persons licensed pursuant to the bail bondsmen and runners licensure statute. This act is effective when it becomes law, and applies to any person licensed under the bail bondsmen and runners licensure statute.***

BILL ANALYSIS: This act authorizes a "North Carolina Bail Agent" shield for persons licensed under the bail bondsmen and runners licensure statute. The shield would be the same size, shape, design, and color (gold with blue lettering) of the current shield issued to Private Investigators, and would include the licensee's last name and license number. The possession of a shield by a licensee that does not meet the requirements in the act would be a violation of the statute. The Commissioner of Insurance may deny, place on probation, suspend, or revoke a license for a violation of any provision of the Bail Bondsmen Article (Article 71, Chapter 58 of the General Statutes).

EFFECTIVE DATE: This act is effective when it becomes law, and applies to any person licensed under the bail bondsmen and runners licensure statute.

H597-smrk-51(CSRK-28)

O. Walker Reagan
Director

H597-SMRK-90 CSRK-57 -V1

Research Division
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HOUSE BILL 762

Short Title:	Amend Certain Bail Bond Procedures.	(Public)
Sponsors:	Representatives Hardister, Faircloth, Turner, and Wray (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee A.	

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS PROCEDURAL REQUIREMENTS REGARDING BAIL BONDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-531(4) reads as rewritten:

"(4) "Bail bond" means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond ~~for which the surety is a bail agent acting on behalf of an insurance company is~~ signed by any surety, as defined in G.S. 15A-531(8)a. and b., is considered the same as a cash deposit for all purposes in this Article. ~~A bail bond signed by a professional bondsman who is not a bail agent is not considered the same as a cash deposit under this Article.~~ Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash."

SECTION 2. G.S. 15A-540(b) reads as rewritten:

"(b) Surrender After Breach of Condition. – After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant, 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. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a ~~certified~~ copy of the bail ~~bond.~~ bond, forfeiture, or release order. Upon surrender of the defendant, the sheriff shall provide a receipt to the surety."

SECTION 3. G.S. 15A-544.5(d)(2) reads as rewritten:

"(d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

...

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the forfeiture was entered. The moving party shall, under G.S. 1A-1, Rule 5, serve a copy of the motion on the district attorney for that

county and on the attorney for the county board of education. ~~The clerk of superior court shall, by personal delivery or by mail, provide a copy of the motion to the district attorney for the county and to the attorney for the county board of education.~~

...."

SECTION 4. G.S. 15A-544.5(d)(4) reads as rewritten:

"(4) If neither the district attorney nor the attorney for the board of education has filed a written objection to the motion by the twentieth day after a copy of the motion is served by the ~~clerk of superior court pursuant to Rule 4~~ moving party pursuant to Rule 5 of the Rules of Civil Procedure, the clerk shall enter an order setting aside the forfeiture, regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either."

SECTION 5. G.S. 15A-544.8(c)(2) reads as rewritten:

"(c) Procedure. – The procedure for obtaining relief from a final judgment under this section is as follows:

...

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the final judgment was, entered. The moving party shall, under G.S. 1A-1, Rule 5, serve a copy of the motion on the district attorney for that county and on the attorney for the county board of education. ~~The clerk of superior court shall, by personal delivery or by mail, provide a copy of the motion to the district attorney for the county and to the attorney for the county board of education.~~

...."

SECTION 6. This act becomes effective December 1, 2013.

HOUSE BILL 762:
Amend Certain Bail Bond Procedures

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 30, 2013
Introduced by:	Reps. Hardister, Faircloth, Turner, Wray	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 762 would treat a bail bond signed by a professional bondsmen who is not a bail agent the same as a cash deposit; require a surety to provide a copy of the bail bond, forfeiture, or release order to the sheriff before surrendering a defendant to a sheriff; and dispense with the requirement that the clerk of court serve the district attorney for the county and the attorney for the county board of education with a copy of a motion to set aside a forfeiture of the bail bond.***

CURRENT LAW: Article 26 of Chapter 15A contains the bail provisions for pretrial release of defendants in criminal cases. A bail bond is an undertaking by a defendant to appear in court, and can be unsecured, secured by a cash deposit of the full amount of the bond, secured by a mortgage, or secured by at least one solvent surety. If the surety is a bail agent (required to be licensed with the Department of Insurance) acting on behalf of an insurance company, the bond is considered the same as a cash deposit. A bail bond signed by a professional bondsman who is not a bail agent is not considered the same as a cash deposit. G.S. 15A-531(4).

If a defendant released on bail fails to appear as required, the court must generally enter a forfeiture for the amount of the bail bond in favor of the State against the defendant and each surety on the bond pursuant to G.S. 15A-544.3. Unless set aside, the forfeited funds go to the local school administrative units in the county in which the forfeiture was entered pursuant to G.S. 115C-452. The forfeiture can be set aside certain circumstances, including when a surety surrenders a defendant to a sheriff and provides the sheriff with a certified copy of the bail bond pursuant to G.S. 15A-540(b). A defendant, surety, professional bondsman or runner for a professional bondsman, or a bail agent acting on behalf of an insurance company, can move to set aside a forfeiture under G.S. 15A-544.5. Both the movant and the clerk of court must serve the district attorney and the attorney for the board of education in the county where the forfeiture was entered with a copy of any motion to set aside a forfeiture or motion for relief from a final judgment of forfeiture. G.S. 15A-544.5(d)(2); G.S. 15A-544.8(c)(2).

BILL ANALYSIS:

Section 1 would amend G.S. 15A-531(4) to treat a bond signed by a professional bondsman who is not a bail agent the same as a cash deposit.

Section 2 would amend G.S. 15A-540(b) to dispense with the requirement that the surety provide a certified copy of a bail bond to the sheriff when surrendering a defendant, and would add a requirement that the surety provide the sheriff with a copy of the forfeiture or release order.

Sections 3, 4, and 5 would amend G.S. 15A-544.5 and G.S. 15A-544.8 to dispense with the requirement that the clerk of court serve the district attorney and the attorney for the school board with a copy of a motion to set aside a forfeiture or for relief from a final judgment of forfeiture.

EFFECTIVE DATE: This act becomes effective December 1, 2013.

Bill Patterson, Staff Attorney, contributed substantially to this summary.

O. Walker Reagan
Director

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Research Division
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 219
Committee Substitute Favorable 5/9/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H219-CSRV-46 [v.1]
6/5/2013 7:08:10 PM

Short Title: Update References/Child Born Out of Wedlock. (Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE WAYS CHILDREN BORN OUT OF WEDLOCK ARE REFERENCED IN THE GENERAL STATUTES BY REMOVING REFERENCES TO "ILLEGITIMATE" WHEN USED IN CONNECTION WITH AN INDIVIDUAL AND TO "BASTARDY", TO ALLOW A CHILD BORN OUT OF WEDLOCK TO INHERIT FROM A PERSON WHO DIED PRIOR TO OR WITHIN ONE YEAR AFTER THE BIRTH OF THAT CHILD IF PATERNITY CAN BE ESTABLISHED BY DNA TESTING, AND TO MAKE OTHER TECHNICAL CORRECTIONS TO THE STATUTES BEING AMENDED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-21(10) reads as rewritten:

"**§ 6-21. Costs allowed either party or apportioned in discretion of court.**

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

....

(10) In proceedings under Article 3 of Chapter 49 of the General Statutes regarding ~~illegitimate~~ children ~~under Article 3, Chapter 49 of the General Statutes.~~born out of wedlock.

...."

SECTION 2. G.S. 8-57(b) reads as rewritten:

"(b) The spouse of the defendant shall be competent but not compellable to testify for the State against the defendant in any criminal action or grand jury proceedings, except that the spouse of the defendant shall be both competent and compellable to so testify:

...

(5) In a prosecution of one spouse for any other criminal offense against the minor child of either spouse, including any child of either spouse who is ~~illegitimate~~ born out of wedlock or adopted or a foster ~~child of either spouse.~~child."

SECTION 3. G.S. 14-325.1 reads as rewritten:

"**§ 14-325.1. When offense of failure to support child deemed committed in State.**

The offense of willful neglect or refusal of a parent to support and maintain a child, and the offense of willful neglect or refusal to support and maintain one's ~~illegitimate child,~~ child born out of wedlock, shall be deemed to have been committed in ~~the State of North Carolina~~ this State whenever the child is living in ~~North Carolina~~ this State at the time of ~~such~~ the willful neglect or refusal to support and maintain ~~such~~ the child."

SECTION 4. The catch line of G.S. 15-155.2 reads as rewritten:

"**§ 15-155.2. District attorney to take action on report of ~~aid to dependent child [Work First Family Assistance] or illegitimate [out of wedlock] birth.~~Work First Family Assistance and children born out of wedlock.**"

SECTION 5. G.S. 15-155.3 reads as rewritten:

"**§ 15-155.3. Disclosure of information by district attorney or agent.**

No such district attorney, assistant district attorney, or any attorney-at-law especially appointed to assist ~~said~~ the district attorney, or any agent or employee of ~~such~~ the district attorney's office shall disclose any information, record, report, case history or any memorandum or document or any information contained therein, which may relate to or be connected with the mother or father of any ~~illegitimate child, or any illegitimate child,~~ child born out of wedlock, or any child born out of wedlock, unless in the opinion of ~~such~~ the district attorney it is necessary or is required in the prosecution and performance of ~~such~~ the district attorney's duties as set forth in the provisions of this Article."

SECTION 6. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or G.S. 29-15, or if in case of an ~~illegitimate intestate,~~ intestate born out of wedlock, there is no one entitled to take under G.S. 29-21 or ~~G.S. 29-22~~ G.S. 29-22, the net estate shall escheat as provided in G.S. 116B-2."

SECTION 7. G.S. 29-18 reads as rewritten:

"**§ 29-18. Succession by, through and from legitimated children.**

A child born ~~an illegitimate~~ out of wedlock who ~~shall have~~ has been legitimated in accordance with G.S. 49-10 or 49-12 or in accordance with the applicable law of any other jurisdiction, and the heirs of ~~such~~ the child, are entitled by succession to property by, through and from the child's father and mother and their heirs the same as if born in lawful wedlock; and if the child dies intestate, the child's property shall descend and be distributed as if the child had been born in lawful wedlock."

SECTION 8. The title of Article 6 of Chapter 29 of the General Statutes reads as rewritten:

"Article 6.

~~Illegitimate Children.~~Children Born Out of Wedlock."

SECTION 9. G.S. 29-19 reads as rewritten:

"**§ 29-19. Succession by, through and from ~~illegitimate children.~~children born out of wedlock.**

(a) For purposes of intestate succession, ~~an illegitimate~~ a child born out of wedlock shall be treated as if that child were the legitimate child of the child's mother, so that the child and the child's lineal descendants are entitled to take by, through and from the child's mother and the child's other maternal kindred, both descendants and collaterals, and they are entitled to take from the child.

(b) For purposes of intestate succession, ~~an illegitimate~~ a child born out of wedlock shall be entitled to take by, through and from:

(1) Any person who has been finally adjudged to be the father of ~~such~~ the child pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16;

(2) Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of ~~such~~ the child in a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime and the child's lifetime in the office of the clerk of superior court of the county where either he or the child resides.

(3) A person who died prior to or within one year after the birth of the child and who can be established to have been the father of the child by DNA testing.

Notwithstanding the above provisions, no person shall be entitled to take hereunder unless the person has given written notice of the basis of the person's claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors.

(c) Any person described under subdivision ~~(b)(1) or (2) above~~ (b)(1), (2), or (3) of this section and the person's lineal and collateral kin shall be entitled to inherit by, through and from the ~~illegitimate~~ child.

(d) Any person who acknowledges that he is the father of ~~an illegitimate~~ a child born out of wedlock in his duly probated last will shall be deemed to have intended that ~~such~~ the child be treated as expressly provided for in ~~said~~ the will or, in the absence of any express provision, the same as a legitimate child."

SECTION 10. G.S. 29-20 reads as rewritten:

"**§ 29-20. Descent and distribution upon intestacy of ~~illegitimate children.~~children born out of wedlock.**

All the estate of a person ~~dying illegitimate and~~ who was born out of wedlock and dies intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Article."

SECTION 11. G.S. 29-21 reads as rewritten:

"**§ 29-21. Share of surviving spouse.**

The share of the surviving spouse of ~~an illegitimate intestate~~ an intestate born out of wedlock shall be the same as provided in G.S. 29-14 for the surviving spouse of a legitimate person. In determining whether the ~~illegitimate~~ intestate is survived by one or more parents as provided in G.S. 29-14(3), any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent."

SECTION 12. G.S. 29-22 reads as rewritten:

"**§ 29-22. Shares of others than the surviving spouse.**

Those persons surviving ~~the illegitimate intestate,~~ an intestate born out of wedlock, other than the surviving spouse, shall take that share of the net estate provided in G.S. 29-15. In determining whether the ~~illegitimate~~ intestate is survived by one or more parents or their collateral kindred as provided in G.S. 29-15, any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent."

SECTION 13. G.S. 30-17 reads as rewritten:

"**§ 30-17. When children entitled to an allowance.**

Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of five thousand dollars ($5,000) for the child's support for the year next ensuing the death of the parent. The allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of the deceased parent. The personal representative of the deceased parent shall, within one year after the parent's death, assign to every such child the allowance herein provided for; but if there is no personal representative or if the personal representative fails or refuses to act within 10 days after written application by a guardian or next friend on behalf of the child, the allowance may be assigned by a magistrate or clerk of court upon application.

If the child resides with the surviving spouse of the deceased parent at the time the allowance is paid, the allowance shall be paid to the surviving spouse for the benefit of the child. If the child resides with its surviving parent who is other than the surviving spouse of the deceased parent, the allowance shall be paid to the surviving parent for the use and benefit of the child. The payment shall be made regardless of whether the deceased died testate or intestate or whether the surviving spouse petitioned for an elective share under Article 1A of Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to ~~an illegitimate child of a deceased father,~~ a deceased father's child born out of wedlock, unless the deceased father has recognized the paternity of the ~~illegitimate~~ child by deed, will, or other ~~paper writing.~~ paper-writing, or unless the deceased father died prior to or within one year after the birth of the child and is established to have been the father of the child by DNA testing. If the child does not reside with a surviving spouse or a surviving parent when the allowance is paid, the allowance shall be paid to the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse the allowance for the benefit of the child."

SECTION 14. G.S. 31-5.5 reads as rewritten:

"**§ 31-5.5. After-born or after-adopted child; ~~illegitimate child;~~ children born out of wedlock; effect on will.**

(a) A will shall not be revoked by the subsequent birth of a child to the testator, or by the subsequent adoption of a child by the testator, or by the subsequent entitlement of an after-born ~~illegitimate~~ child born out of wedlock to take as an heir of the testator pursuant to the provisions of G.S. 29-19(b), but any after-born, after-adopted or entitled after-born ~~illegitimate~~ child born out of wedlock shall have the right to share in the testator's estate to the same extent the after-born, after-adopted, or entitled after-born ~~illegitimate~~ child born out of wedlock would have shared if the testator had died intestate unless:

(1) The testator made some provision in the will for the child, whether adequate or not;

(2) It is apparent from the will itself that the testator intentionally did not make specific provision therein for the child;

(3) The testator had children living when the will was executed, and none of the testator's children actually take under the will;

(4) The surviving spouse receives all of the estate under the will; or

(5) The testator made provision for the child that takes effect upon the death of the testator, whether adequate or not.

(b) The provisions of G.S. 28A-22-2 shall be construed as being applicable to after-adopted children and to after-born children, whether legitimate or entitled ~~illegitimate.~~ children born out of wedlock.

(c) The terms "after-born," "after-adopted" and "entitled after-born" as used in this section refer to children born, adopted or entitled subsequent to the execution of the will."

SECTION 15. The title of Chapter 49 of the General Statutes reads as rewritten:

"**Chapter 49.**

~~Bastardy.~~ Children Born Out of Wedlock."

SECTION 16. The title of Article 1 of Chapter 49 of the General Statutes reads as rewritten:

"Article 1.

Support of ~~Illegitimate Children.~~ Children Born Out of Wedlock."

SECTION 17. G.S. 49-2 reads as rewritten:

"**§ 49-2. Nonsupport of ~~illegitimate~~ child born out of wedlock by parents made misdemeanor.**

Any parent who willfully neglects or who refuses to provide adequate support and maintain his or her ~~illegitimate~~ child born out of wedlock shall be guilty of a Class 2 misdemeanor. A child within the meaning of this Article shall be any person less than 18 years of age and any

person whom either parent might be required under the laws of North Carolina to support and maintain if ~~such~~ the child were the legitimate child of ~~such~~ the parent."

SECTION 18. G.S. 49-4 reads as rewritten:

"**§ 49-4. When prosecution may be commenced.**

The prosecution of the reputed father of ~~an illegitimate~~ a child born out of wedlock may be instituted under this Chapter within any of the following periods, and not thereafter:

(1) Three years next after the birth of the child; or

(2) Where the paternity of the child has been judicially determined within three years next after its birth, at any time before the child attains the age of 18 years; or

(3) Where the reputed father has acknowledged paternity of the child by payments for the support thereof within three years next after the birth of ~~such~~ the child, three years from the date of the last payment whether ~~such~~ the last payment was made within three years of the birth of ~~such~~ the child or thereafter: Provided, the action is instituted before the child attains the age of 18 years.

The prosecution of the mother of ~~an illegitimate~~ a child born out of wedlock may be instituted under this Chapter at any time before the child attains the age of 18 years."

SECTION 19. G.S. 49-6 reads as rewritten:

"**§ 49-6. Mother not excused on ground of self-incrimination; not subject to penalty.**

No mother of ~~an illegitimate~~ a child born out of wedlock shall be excused, on the ground that it may tend to incriminate her or subject her to a penalty or a forfeiture, from attending and testifying, in obedience to a subpoena of any court, in any suit or proceeding based upon or growing out of the provisions of this Article, but no such mother shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, she may so testify."

SECTION 20. G.S. 49-7 reads as rewritten:

"**§ 49-7. Issues and orders.**

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to provide adequate support and maintain the child who is the subject of the proceeding. After this matter ~~shall have been~~ has determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the child, subject to the limitations of G.S. 50-13.10. The amount of child support shall be determined as provided in G.S. 50-13.4(c). The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court. The social security number, if known, of the minor child's parents shall be placed in the record of the proceeding. Compliance by the defendant with any or all of the further provisions of this Article or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof.

The court before whom the matter may be brought, on motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person. The

evidentiary effect of those blood tests and comparisons and the manner in which the expenses therefor are to be taxed as costs shall be as prescribed in G.S. 8-50.1. In addition, if a jury tries the issue of parentage, they shall be instructed as set out in G.S. 8-50.1. From a finding on the issue of parentage against the alleged-parent defendant, the alleged-parent defendant has the same right of appeal as though he or she had been found guilty of the crime of willful failure to support ~~an illegitimate child.~~a child born out of wedlock."

SECTION 21. The title of Article 2 of Chapter 49 of the General Statutes reads as rewritten:

"Article 2.

Legitimation of ~~Illegitimate Children.~~Children Born Out of Wedlock."

SECTION 22. The title of Article 3 of Chapter 49 of the General Statutes reads as rewritten:

"Article 3.

Civil Actions Regarding ~~Illegitimate Children.~~Children Born Out of Wedlock."

SECTION 23. G.S. 49-15 reads as rewritten:

"**§ 49-15. Custody and support of ~~illegitimate~~ children born out of wedlock when paternity established.**

Upon and after the establishment of paternity pursuant to G.S. 49-14 of ~~an illegitimate~~ a child ~~pursuant to G.S. 49-14,~~ born out of wedlock, the rights, duties, and obligations of the mother and the father so established, with regard to support and custody of the child, shall be the same, and may be determined and enforced in the same manner, as if the child were the legitimate child of ~~such~~ the father and mother. When paternity has been established, the father becomes responsible for medical expenses incident to the pregnancy and the birth of the child."

SECTION 24. G.S. 50-11(b) reads as rewritten:

"(b) No judgment of divorce shall ~~render illegitimate~~ cause any child in ~~esse,~~ esse or begotten of the body of the wife during ~~coverture.~~coverture to be treated as a child born out of wedlock."

SECTION 25. G.S. 97-2 reads as rewritten:

"**§ 97-2. Definitions.**

When used in this Article, unless the context otherwise requires:

...

(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a

part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to ~~G.S. 143B-491(a) [G.S. 143B-1031(a)]~~G.S. 143B-1031(a) when performing duties in the course and scope of a State-approved mission pursuant to ~~Article 11 of Chapter 143B [Subpart C of Part 5 of Article 13 of Chapter 143B]~~ Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in

the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

"Employee" shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person.

...

(5) Average Weekly Wages. – "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States government, provided the amount of said allowance shall be reported monthly by said trainee to his employer, divided by 52; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of fewer than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, results fair and just to both parties will be thereby obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

Where a minor employee, under the age of 18 years, sustains a permanent disability or dies leaving dependents surviving, the compensation payable for permanent disability or death shall be calculated, first, upon the average weekly wage paid to adult employees employed by the same employer at the time of the accident in a similar or like class of work which the injured minor employee would probably have been promoted to if not injured, or, second, upon a wage sufficient to yield the maximum weekly compensation benefit. Compensation for temporary total disability or for the death of a minor without dependents shall be computed upon the average weekly wage at the time of the accident, unless the total disability extends more than 52 weeks, and then the compensation may be increased in proportion to his expected earnings.

In case of disabling injury or death to a volunteer fireman; member of an organized rescue squad; an authorized pickup firefighter, as defined in subdivision (2) of this section, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources; a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol functioning under ~~Article 11 of Chapter 143B [Subpart C of Part 5 of Article 13 of Chapter 143B]~~ Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes, under compensable circumstances, compensation payable shall be calculated upon the average weekly wage the volunteer fireman, member of an organized rescue squad, authorized pickup firefighter of the Division of Forest Resources, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources, member of an auxiliary police department, or senior member of the State Civil Air Patrol was earning in the employment wherein he principally earned his livelihood as of the date of injury. Provided, however, that the minimum compensation payable to a volunteer fireman, member of an organized rescue squad, an authorized pickup firefighter of the Division of Forest Resources of the Department of Agriculture and Consumer Services, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources, a sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or senior members of the State Civil Air Patrol shall be sixty-six and two-thirds percent (66 2/3%) of the maximum weekly benefit established in G.S. 97-29.

...

(12) Child, Grandchild, Brother, Sister. – The term "child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged ~~illegitimate~~ child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent upon him. "Grandchild" means a ~~child as above defined of a child as above defined.~~ child, as defined in this subdivision, of a child, as defined in this subdivision. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employee are under 18 years of age.

...."

SECTION 26. G.S. 130A-119 reads as rewritten:

"**§ 130A-119. Clerk of Court to furnish State Registrar with facts as to paternity of ~~illegitimate~~ children born out of wedlock when judicially determined.**

Upon the entry of a judgment determining the paternity of ~~an illegitimate child,~~ a child born out of wedlock, the clerk of court of the county in which the judgment is entered shall notify the State Registrar in writing of the name of the person against whom the judgment has been entered, together with the other facts disclosed by the record as may assist in identifying the record of the birth of the child as it appears in the office of the State Registrar. If the judgment is modified or vacated, that fact shall be reported by the clerk to the State Registrar in the same manner. Upon receipt of the notification, the State Registrar shall record the information upon the birth certificate of the ~~illegitimate~~ child."

SECTION 27. G.S. 143-166.2(a) and (c) read as rewritten:

"(a) The term "dependent child" shall mean any unmarried child of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol whether natural, adopted, posthumously born or whether ~~an illegitimate~~ a child born out of wedlock as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his chief support from said officer or fireman or rescue squad worker or senior member of the Civil Air Patrol at the time of his death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or fireman's or rescue squad worker's or senior Civil Air Patrol member's death as hereinafter provided, he shall continue to be eligible to receive such benefits regardless of his age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the fireman's, the rescue squad worker's or the senior Civil Air Patrol member's death shall so long as he remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

...

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties. When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty" shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while engaged in a State requested and approved mission pursuant to ~~Article 11 of Chapter 143B [Article 13 of Chapter 143B]~~ Article 13 of Chapter 143B of the General Statutes. For purposes of this Article, when a law enforcement officer, fireman, rescue squad worker, or senior Civil Air Patrol member dies as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the law enforcement officer, fireman, rescue squad worker, or senior Civil Air Patrol member is presumed to have been killed in the line of duty."

SECTION 28. This act is effective when it becomes law, and Sections 9 and 13 of the act apply to estates of persons dying on or after that date.

HOUSE BILL 219:
Update References/Child Born Out of Wedlock

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 5, 2013
Introduced by:	Reps. Glazier, Stam, Faircloth, Michaux	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition H219-CSRV-46		

SUMMARY: ***House Bill 219 would change references to illegitimate children and illegitimate intestates with references to children or intestates "born out of wedlock" and make other technical corrections. The bill would allow a child born out of wedlock to inherit from and to receive a year's allowance from a person who died prior to or within one year after the birth of that child if paternity can be established by DNA testing.***

CURRENT LAW: The General Statutes now refer to an individual whose parents were not married as "illegitimate." The chapter of the General Statutes that primarily deals with issues relating to individuals whose parents were not married is entitled "Bastardy."

Under the current laws that govern what occurs when a person dies without a valid will, children born out of wedlock are treated if they were the legitimate child of the child's mother, but they can inherit from a reputed father only when paternity has been judicially established in a prosecution for child support under Article 1 of G.S. Chapter 49, or in a civil action to establish paternity under Article 3 of Chapter 49.

BILL ANALYSIS: House Bill 219 would:

- Replace references to an individual being "illegitimate" with references to an individual "born out of wedlock" throughout the General Statutes.
- Change the title of Chapter 49 of the General Statutes from "Bastardy" to "Children Born Out of Wedlock." *(Section 15)*
- Allow a child born out of wedlock to inherit from and to receive a year's allowance from a person who died prior to or within one year after the birth of that child if paternity can be established by DNA testing. *(Sections 9 and 13)*

In addition, the bill would make other technical amendments to the statutes being amended by updating references, eliminating legalese, and correcting punctuation.

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

Bly Hall, Staff Attorney, contributed to this summary.

O. Walker Reagan
Director

H219-SMRV-124 CSRV-46 -V1

Research Division
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 331
Committee Substitute Favorable 4/30/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H331-CSRV-45 [v.2]
6/5/2013 5:58:21 PM

Short Title: HOAs/Uniform Lien Procedure. (Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO STABILIZE TITLES AND TO PROVIDE A UNIFORM PROCEDURE TO ENFORCE CLAIMS OF LIEN SECURING SUMS DUE CONDOMINIUM AND PLANNED COMMUNITY ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-3-116 reads as rewritten:

"**§ 47C-3-116. Lien for ~~assessments.~~sums due the association; enforcement.**

(a) Any assessment ~~levied against~~ attributable to a unit ~~remaining~~ which remains unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided ~~herein.~~ in this section. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. ~~Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. If the unit owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation.~~ Unless the declaration ~~otherwise provides,~~ provides otherwise, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are ~~enforceable as assessments~~ subject to the claim of lien under this ~~section.~~ section as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision. ~~Except as provided in subsections (a1) and (a2) of this section, the association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale or under Article 2A of Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific unit.~~

~~(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.~~

~~(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.~~

~~(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.~~

~~(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.~~

~~(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.~~

~~(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47C-4-117.~~

~~(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.~~

~~(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.~~

~~(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by~~

~~such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.~~

~~(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters and no smaller than the largest print used elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9).~~

(b) The association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the unit and the unit owner's address of record with the association and, if different, to the address for the unit owner shown on the county tax records for the unit. If the unit owner is a corporation or limited liability company, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a statement to an address known to be a vacant unit or to a unit for which there is no United States postal address.

(c) A claim of lien shall set forth the name and address of the association, the name of the record owner of the unit at the time the claim of lien is filed, a description of the unit, and the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure as provided in subsection (f) of this section. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW."

The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1)c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage

prepaid to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant unit or to a unit for which there is no United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court.

(d) A claim of lien filed under this section is prior to all liens and encumbrances on a unit except (i) liens and encumbrances, specifically including, but not limited to, a mortgage or deed of trust on the unit, recorded before the filing of the claim of lien in the office of the clerk of superior court; and (ii) liens for real estate taxes and other governmental assessments and charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(e) The association shall be entitled to recover the reasonable attorneys' fees and costs it incurs in connection with the collection of any sums due. A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees, costs, and expenses. The notice must be sent by first-class mail to the physical address of the unit and the unit owner's address of record with the association and, if different, to the address for the unit owner shown on the county tax records for the unit. The association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. Notwithstanding anything to the contrary in this Chapter, there shall be no requirement that notice under this subsection be mailed to an address which is known to be a vacant unit or a unit for which there is no United States postal address. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees, costs, or expenses. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (i) of this section and shall provide the name and telephone number of the representative.

(f) Except as provided in subsection (h) of this section, the association, acting through the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific unit. The following provisions and procedures shall be applicable to and complied with in every nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall control to the extent they are inconsistent or in conflict with the provisions of Article 2A of Chapter 45 of the General Statutes:

(1) The association shall be deemed to have a power of sale for purposes of enforcement of its claim of lien.

(2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of the General Statutes shall mean the association, except as provided otherwise in this Chapter.

(3) The term "security instrument" as used in Article 2A of Chapter 45 of the General Statutes shall mean the claim of lien.

(4) The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes shall mean the person or entity appointed by the association under subdivision (6) of this subsection.

(5) After the association has filed a claim of lien and prior to the commencement of a nonjudicial foreclosure, the association shall give to the unit owner notice of the association's intention to commence a nonjudicial foreclosure to enforce its claim of lien. The notice shall contain the information required in G.S. 45-21.16(c)(5a).

(6) The association shall appoint a trustee to conduct the nonjudicial foreclosure proceeding and sale. The appointment of the trustee shall be included in the claim of lien or in a separate instrument filed with the office of the clerk of court in the county in which the unit is located as an exhibit to the notice of hearing. The association, at its option, may from time to time remove a trustee previously appointed and appoint a successor trustee by filing a Substitution of Trustee with the clerk of court in the foreclosure proceeding. Counsel for the association may be appointed by the association to serve as the trustee and may serve in that capacity as long as the unit owner does not contest the obligation to pay the amount of any sums due the association, or the validity, enforcement, or foreclosure of the claim of lien as provided in subdivision (12) of this subsection. Any trustee appointed pursuant to this subsection shall have the same fiduciary duties and obligations as a trustee in the foreclosure of a deed of trust.

(7) If a valid debt, default, and notice to those entitled to receive notice under G.S. 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale of the property described in the claim of lien by the trustee.

(8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27, the unit owner satisfies the debt secured by the claim of lien and pays all expenses and costs incurred in filing and enforcing the association assessment lien, including, but not limited to, advertising costs, attorneys' fees, and the trustee's commission, then the trustee shall dismiss the foreclosure action and the association shall cancel the claim of lien of record in accordance with the provisions of G.S. 45-36.3. The unit owner shall have all rights granted under Article 4 of Chapter 45 of the General Statutes to ensure the association's satisfaction of the claim of lien.

(9) Any person, other than the trustee, may bid at the foreclosure sale. Unless prohibited in the declaration or bylaws, the association may bid on the unit at a foreclosure sale directly or through an agent. If the association or its agent is the high bidder at the sale, the trustee shall allow the association to pay the costs and expenses of the sale and apply a credit against the sums due by the unit owner to the association in lieu of paying the bid price in full.

(10) Upon the expiration of the upset bid period provided in G.S. 45-21.27, the trustee shall have full power and authority to execute a deed for the unit to the high bidder.

(11) The trustee shall be entitled to a commission for services rendered which shall include fees, costs, and expenses reasonably incurred by the trustee in connection with the foreclosure whether or not a sale is held. Except as provided in subdivision (12) of this subsection, the trustee's commission shall be paid without regard to any limitations on compensation otherwise provided by law, including, without limitation, the provisions of G.S. 45-21.15.

(12) If the unit owner does not contest the obligation to pay or the amount of any sums due the association or the validity, enforcement, or foreclosure of the claim of lien at any time after the expiration of the 15-day period following notice as required in subsection (b) of this section, then attorneys' fees and the trustee's commission collectively charged to the unit owner shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The obligation to pay and the amount of any sums due the association and the validity, enforcement, or foreclosure of the claim of lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of any portion of the sums claimed due by the association or the validity, enforcement, or foreclosure of the claim of lien. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(13) Unit owners shall be deemed to have the rights and remedies available to mortgagors under G.S. 45-21.34.

(g) The provisions of subsection (f) of this section do not prohibit or prevent an association from pursuing judicial foreclosure of a claim of lien, from taking other actions to recover the sums due the association, or from accepting a deed in lieu of foreclosure. Any judgment, decree, or order in any judicial foreclosure or civil action relating to the collection of assessments shall include an award of costs and reasonable attorneys' fees for the prevailing party, which shall not be subject to the limitation provided in subdivision (f)(12) of this section.

(h) A claim of lien securing a debt consisting solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration, and any claim of lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes.

(i) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule after the unit owner has been given notice, as required in subsection (e) of this section. Attorneys' fees incurred in connection with any request that the association agrees to accept payment of all or any part of sums due in installments shall not be included or considered in the calculation of fees chargeable under subdivision (f)(12) of this section.

(j) Where the holder of a first mortgage or first deed of trust of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, the purchaser and its heirs, successors, and assigns shall not be liable for the assessments against the unit which became due prior to the acquisition of title to the unit by the purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including the purchaser, its heirs, successors, and assigns. For purposes of this subsection, the term "acquisition of title" means and refers to the recording of a deed conveying title or the time at which the rights of the parties are fixed following the foreclosure of a mortgage or deed of trust, whichever occurs first."

SECTION 2. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read as follows:

"**§ 47C-3-116.1. Validation of certain nonjudicial foreclosure proceedings and sales.**

All nonjudicial foreclosure proceedings commenced by an association before October 1, 2013, and all sales and transfers of real property as part of those proceedings pursuant to the provisions of this Chapter, Chapter 47A of the General Statutes, or provisions contained in the declaration of the condominium, are declared to be valid unless an action to set aside the foreclosure is commenced on or before October 1, 2013, or within one year after the date of the sale, whichever occurs last."

SECTION 3. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for ~~assessments.~~sums due the association; enforcement.**

(a) Any assessment ~~levied against~~ attributable to a lot ~~remaining~~ which remains unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided ~~herein.~~ in this section. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. ~~Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation.~~ Unless the declaration ~~otherwise provides,~~ provides otherwise, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are ~~enforceable as assessments~~ subject to the claim of lien under this ~~section.~~ section as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision. ~~Except as provided in subsections (a1) and (a2) of this section, the association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale or under Article 2A of Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.~~

~~(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.~~

~~(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.~~

~~(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.~~

~~(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.~~

~~(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.~~

~~(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.~~

~~(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.~~

~~(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.~~

~~(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.~~

~~(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters and no smaller than the largest print used elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a~~

~~complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9).~~

(b) The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. If the lot owner is a corporation or limited liability company, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a statement to an address known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address.

(c) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure, as provided in subsection (f) of this section. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW."

The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1)c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court.

(d) A claim of lien filed under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances, specifically including, but not limited to, a mortgage or deed of trust on the lot, recorded before the filing of the claim of lien in the office of the clerk of superior court; and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(e) The association shall be entitled to recover the reasonable attorneys' fees and costs it incurs in connection with the collection of any sums due. A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees, costs, and expenses. The notice must be sent by first-class mail to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Notwithstanding anything to the contrary in this Chapter, there shall be no requirement that notice under this subsection be mailed to an address which is known to be a vacant lot on which no dwelling has been constructed or a lot for which there is no United States postal address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees, costs, or expenses. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance, as provided in subsection (i) of this section, and shall provide the name and telephone number of the representative.

(f) Except as provided in subsection (h) of this section, the association, acting through the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.

(g) The following provisions and procedures shall be applicable to and complied with in every nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall control to the extent they are inconsistent or in conflict with the provisions of Article 2A of Chapter 45 of the General Statutes:

(1) The association shall be deemed to have a power of sale for purposes of enforcement of its claim of lien.

(2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of the General Statutes shall mean the association, except as provided otherwise in this Chapter.

(3) The term "security instrument" as used in Article 2A of Chapter 45 of the General Statutes shall mean the claim of lien.

(4) The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes shall mean the person or entity appointed by the association under subdivision (6) of this subsection.

(5) After the association has filed a claim of lien and prior to the commencement of a nonjudicial foreclosure, the association shall give to the lot owner notice of the association's intention to commence a nonjudicial foreclosure to enforce its claim of lien. The notice shall contain the information required in G.S. 45-21.16(c)(5a).

(6) The association shall appoint a trustee to conduct the nonjudicial foreclosure proceeding and sale. The appointment of the trustee shall be included in the

claim of lien or in a separate instrument filed with the clerk of court in the county in which the planned community is located as an exhibit to the notice of hearing. The association, at its option, may from time to time remove a trustee previously appointed and appoint a successor trustee by filing a Substitution of Trustee with the clerk of court in the foreclosure proceeding. Counsel for the association may be appointed by the association to serve as the trustee and may serve in that capacity as long as the lot owner does not contest the obligation to pay or the amount of any sums due the association, or the validity, enforcement, or foreclosure of the claim of lien, as provided in subdivision (12) of this subsection. Any trustee appointed pursuant to this subsection shall have the same fiduciary duties and obligations as a trustee in the foreclosure of a deed of trust.

(7) If a valid debt, default, and notice to those entitled to receive notice under G.S. 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale of the property described in the claim of lien by the trustee.

(8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27, the lot owner satisfies the debt secured by the claim of lien and pays all expenses and costs incurred in filing and enforcing the association assessment lien, including, but not limited to, advertising costs, attorneys' fees, and the trustee's commission, then the trustee shall dismiss the foreclosure action and the association shall cancel the claim of lien of record in accordance with the provisions of G.S. 45-36.3. The lot owner shall have all rights granted under Article 4 of Chapter 45 of the General Statutes to ensure the association's satisfaction of the claim of lien.

(9) Any person, other than the trustee, may bid at the foreclosure sale. Unless prohibited in the declaration or bylaws, the association may bid on the lot at a foreclosure sale directly or through an agent. If the association or its agent is the high bidder at the sale, the trustee shall allow the association to pay the costs and expenses of the sale and apply a credit against the sums due by the lot owner to the association in lieu of paying the bid price in full.

(10) Upon the expiration of the upset bid period provided in G.S. 45-21.27, the trustee shall have full power and authority to execute a deed for the lot to the high bidder.

(11) The trustee shall be entitled to a commission for services rendered which shall include fees, costs, and expenses reasonably incurred by the trustee in connection with the foreclosure, whether or not a sale is held. Except as provided in subdivision (12) of this subsection, the trustee's commission shall be paid without regard to any limitations on compensation otherwise provided by law, including, without limitation, the provisions of G.S. 45-21.15.

(12) If the lot owner does not contest the obligation to pay the amount of any sums due the association or the validity, enforcement, or foreclosure of the claim of lien at any time after the expiration of the 15-day period following notice as required in subsection (b) of this section, then attorneys' fees and the trustee's commission collectively charged to the lot owner shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The obligation to pay and the amount of any sums due the association and the validity, enforcement, or foreclosure of the claim of lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of any portion of the sums claimed due by the association or the

validity, enforcement, or foreclosure of the claim of lien. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(13) Lot owners shall be deemed to have the rights and remedies available to mortgagors under G.S. 45-21.34.

(g) The provisions of subsection (f) of this section do not prohibit or prevent an association from pursuing judicial foreclosure of a claim of lien, from taking other actions to recover the sums due the association, or from accepting a deed in lieu of foreclosure. Any judgment, decree, or order in any judicial foreclosure or civil action relating to the collection of assessments shall include an award of costs and reasonable attorneys' fees for the prevailing party, which shall not be subject to the limitation provided in subdivision (f)(12) of this section.

(h) A claim of lien securing a debt consisting solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration, and any claim of lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes.

(i) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule after the lot owner has been given notice, as required in subsection (e) of this section. Attorneys' fees incurred in connection with any request that the association agrees to accept payment of all or any part of sums due in installments shall not be included or considered in the calculation of fees chargeable under subdivision (f)(12) of this section.

(j) Where the holder of a first mortgage or first deed of trust of record or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, the purchaser and its heirs, successors, and assigns shall not be liable for the assessments against the lot which became due prior to the acquisition of title to the lot by the purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all the lot owners, including the purchaser, its heirs, successors, and assigns. For purposes of this subsection, the term "acquisition of title" means and refers to the recording of a deed conveying title or the time at which the rights of the parties are fixed following the foreclosure of a mortgage or deed of trust, whichever occurs first."

SECTION 4. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read as follows:

"**§ 47F-3-116.1. Validation of certain nonjudicial foreclosure proceedings and sales.**

All nonjudicial foreclosure proceedings commenced by an association before October 1, 2013, and all sales and transfers of real property as part of those proceedings pursuant to the provisions of this Chapter or provisions contained in the declaration of the planned community, are declared to be valid, unless an action to set aside the foreclosure is commenced on or before October 1, 2013, or within one year after the date of the sale, whichever occurs last."

SECTION 5. This act becomes effective October 1, 2013. Nothing in Section 2 or Section 4 of this act shall be construed as being applicable to or affecting any pending litigation.

HOUSE BILL 331:
HOAs/Uniform Lien Procedure

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 6, 2013
Introduced by:	Reps. Bryan, Stam	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to Second Edition H331-CSRV-45		Committee Counsel

SUMMARY: ***House Bill 331 would provide a uniform procedure to enforce claims of lien securing sums owed to condominium and planned community associations.***

CURRENT LAW: Provisions related to the management of condominiums and the management of planned communities are somewhat parallel. Chapter 47C of the General Statutes is the Condominium Act. As defined in the act, "condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Chapter 47F of the General Statutes is the N.C. Planned Community Act. As defined in the act, "planned community" means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration.

BILL ANALYSIS: House Bill 331 rewrites statutes governing liens for assessments by condominium and planned community associations. The bill would provide a uniform procedure to enforce claims of lien securing sums due to condominium and planned community associations, and clarify the sums owed to an association which are secured by claims of liens.

The bill includes new provisions concerning foreclosure of liens in like manner as a mortgage or deed of trust on real estate under power of sale and specifies how the procedure differs from Article 2A of Chapter 45. It (1) provides for associations to appoint a trustee to conduct nonjudicial foreclosure proceeding and sale; (2) gives notice to unit owner of intent to commence nonjudicial foreclosure; (3) provides dismissal of the foreclosure procedure if debt plus costs, attorneys' fees, and trustee commission is satisfied before upset period expires; (4) allows authorization for the association to bid at foreclosure proceeding; and (5) provides trustee compensation. Finally, it modifies notice procedures for lien claims.

The bill makes the following additional changes: (1) clarifies the addresses which must be used in required notices and claims of liens and eliminates the requirement to mail copies of liens to addresses known to be vacant, (2) vests owners with rights to insure claims of lien are cancelled upon satisfaction, (3) provides curative provisions for title passed through previous foreclosures, and (4) clarifies the law on award of attorney's fees to the prevailing party in an action involving a dispute as to whether delinquent assessments are owed.

BACKGROUND: House Bill 331 was recommended by the Real Property Section of the NC Bar Association and approved by the Bar Association's Board of Governors.

EFFECTIVE DATE: The bill would become effective October 1, 2013. Sections 2 and 4 of the bill would not apply to pending litigation.

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 6-6 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Carol Ann Schwarzenbach	Jacksonville	Brown
2. Jordan Smith	Henderson	Bryant
3. Anjan Sapasetty	~~Cary~~ Cary	Jackson
4. Alex Stroud	Aberdeen	Tillman
5. Amelia Mangan	Granite Falls	Soucek
6. Mary Catherine Starnes	Hickory	Soucek
7.		
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 06/06/13 ROOM: 1124

1. HAL ROACH
2. ROBERT YOUNG
3. ASHLEY MICKENS
4. BILLY FRITSCHER

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 6, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Reggie Holley	Paul / Longmire Group
Peg Dorer	Conf. of DAs
Rose Williams	NCDOT
Hope Carmichael	Raleigh - attorney
Elizabeth Dutton	NCBA
Rebecca Troxler	NCACC
[illegible]	RCG
Todd Below	NC Advocates for Justice

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 6, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mike Mann	NCBAA
Pat Yancey	APPCNC
Dave Holm	NCBA
Amanda Mercier	TSS
Ches McDowell	RECA
Kelli Mahan	Duke Energy

Senate Committee on Judiciary II
Tuesday, June 11, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 350	Court Improvem't Project Juv Law Changes.-AB	Rep. Jordan Rep. C. Graham
HB 465	No Possession of Firearms/Undocumented Aliens.	Rep. McNeill Rep. Warren Rep. Faircloth Rep. Ford
HB 611	Suspension Removed When Eligibility Met.	Rep. W. Brawley
HB 850	Possession of Needles/Tell Law Officer.	Rep. McNeill Rep. Faircloth Rep. Hardister Rep. Dollar
HB 879	Grand Jurors/Service.	Rep. Davis Rep. Daughtry

Adjournment

Senate Judiciary II Committee
Tuesday, June 11, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, June 11, 2013 in room 1124 of the Legislative Building. Jordan Perry of Durham; David Kostenberger of Wake Forest; Greg Stewart of Garner; William Cheung and Spencer Zachary of Taylorsville; and Tyler Hendricks and Daniel Rangel of Greensboro served as pages. Senator Daniel presided as chair.

H.B. 350 – Court Improvem't Project Juv Law Changes - AB

Representative Jordan was recognized to explain the bill which would make various changes to the juvenile code pursuant to revisions proposed by the Court Improvement Project. Senator Davis moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 465 – No Possession of Firearms/Undocumented Aliens

Representative McNeill was recognized to explain the bill. It would make it a criminal offense for a person who is not lawfully in the United States to possess a firearm. Hal Pell, an Attorney with the Research Division, was recognized to answer questions. Senator Cook moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 850 – Possession of Needles/Tell Law Officer

Representative McNeill explained the bill. It would provide that a person who alerts an officer of the presence of a hypodermic needle or other sharp object possessed by the person prior to a search by the officer shall not be charged with possession of drug paraphernalia for the possession of the needle or other sharp object. Senator Tucker moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 611 – Suspension Removed When Eligibility Met

Representative Brawley was recognized to explain the bill. It would require the Division of Motor Vehicles to expunge suspensions and revocations entered on a limited permittee or provisional licensee's driving record if the student provides the required documentation to the Division that the student meets eligibility requirements and if the limited permittee or provisional licensee has never had a prior expunction. Brenda Carter, an Attorney with the Research Division, was recognized to answer questions. Senator Tucker moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 879 – Grand Jurors/Service

Representative Davis was recognized to explain the bill which provides that jurors who serve a full term of service as a grand juror are not required to serve again as a juror for a period of six years. Senator Randleman moved for a favor report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 10:16 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk
Reading Clerk

Corrected #1: H698 - Background Checks for Firefighters has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 11, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 350	Court Improvem't Project Juv Law Changes.-AB	Representative Jordan Representative C. Graham
HB 465	No Possession of Firearms/Undocumented Aliens.	Representative McNeill Representative Warren Representative Faircloth Representative Ford
HB 611	Suspension Removed When Eligibility Met.	Representative W. Brawley
HB 850	Possession of Needles/Tell Law Officer.	Representative McNeill Representative Faircloth Representative Hardister
HB 879	Grand Jurors/Service.	Representative Dollar Representative Davis Representative Daughtry

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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HB 698	Background Checks for Firefighters.	Representative Saine Representative Ramsey Representative Boles
HB 850	Possession of Needles/Tell Law Officer.	Representative McNeill Representative Faircloth Representative Hardister
HB 879	Grand Jurors/Service.	Representative Dollar Representative Davis Representative Daughtry

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, June 11, 2013

Senator Daniel,
submits the following with recommendations as to passage:

FAVORABLE

HB **350** **(CS#1)** Court Improvemt Project Juv Law Changes.-AB
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **465** No Possession of Firearms/Undocumented Aliens.
Draft Number: None
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

HB **611** Suspension Removed When Eligibility Met.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **850** **(CS#1)** Possession of Needles/Tell Law Officer.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **879** **(CS#1)** Grand Jurors/Service.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Senator Warren Daniel will handle HB 350
Senator Jerry Tillman will handle HB 465
Senator James Davis will handle HB 611
Senator Jerry Tillman will handle HB 850
Senator Thomas Goolsby will handle HB 879

HOUSE BILL 350*
Committee Substitute Favorable 4/4/13

Short Title: Court Improvem't Project Juv Law Changes.-AB (Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE CODE PURSUANT TO REVISIONS PROPOSED BY THE COURT IMPROVEMENT PROJECT.

The General Assembly of North Carolina enacts:

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

"**§ 7B-101. Definitions.**

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

...

~~(5) Community based program. – A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.~~

...

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

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

...

(18b) Return home or reunification. – Placement of the juvenile in the home of either parent or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order.

...

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

...

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

SECTION 2. G.S. 7B-200(b) reads as rewritten:

"(b) The court shall have jurisdiction over the ~~parent or guardian~~parent, guardian, custodian, or caretaker of a juvenile who has been adjudicated abused, neglected, or dependent,

~~as provided by G.S. 7B-904,~~ provided the ~~parent or guardian~~parent, guardian, custodian, or caretaker has (i) been properly served with summons pursuant to ~~G.S. 7B-406.~~G.S. 7B-406, (ii) waived service of process, or (iii) automatically become a party pursuant to G.S. 7B-401.1(c) or (d)."

SECTION 3. G.S. 7B-311(b)(2) reads as rewritten:

"(b) The Department shall also maintain a list of responsible individuals. The Department may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children. The name of an individual who has been identified as a responsible individual shall be placed on the responsible individuals list only after one of the following:

...

(2) The court determines that the individual is a responsible individual as a result of a hearing ~~either:~~on the individual's petition for judicial review.

~~a. On the individual's petition for judicial review; or~~

~~b. On a juvenile petition that alleges and seeks a determination that the individual is a responsible person.~~

...."

SECTION 4. G.S. 7B-320 reads as rewritten:

"**§ 7B-320. Notification to individual determined to be a responsible individual.**

(a) Within five working days after the completion of an investigative assessment response that results in a determination of abuse or serious neglect and the identification of a responsible individual, the director shall personally deliver written notice of the determination to the identified individual.

(b) If personal written notice is not made within 15 days of the ~~determination,~~determination and the director has made diligent efforts to locate the identified individual, the director shall send the notice to the ~~identified~~ individual by registered or certified mail, ~~restricted delivery,~~ return receipt requested, and addressed to the individual at the individual's last known address.

(c) The notice shall include all of the following:

(1) A statement informing the individual of the nature of the investigative assessment response and whether the director determined abuse or serious neglect or both.

(1a) A statement that the individual has been identified as a responsible individual.

(2) A statement summarizing the substantial evidence supporting the director's determination without identifying the reporter or collateral contacts.

(3) A statement informing the individual that unless the individual petitions for judicial review, the individual's name will be placed on the responsible individuals list as provided in G.S. 7B-311, and that the Department of Health and Human Services may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(4) A clear description of the actions the individual must take to seek judicial review of the director's determination.

(d) In addition to the notice, the director shall provide the individual with a copy of a petition for judicial review ~~form and instructions for how to file and serve the petition.~~form."

SECTION 5. G.S. 7B-323 reads as rewritten:

"...

(a1) If the director cannot show that the individual has received actual notice, the director shall not place the individual on the responsible individuals list until an ex parte hearing is held at which a district court judge determines that the director made diligent efforts to find the individual. A finding that the individual is evading service is relevant to the determination that the director made diligent efforts.

(b) The clerk of court shall maintain a separate docket for judicial review actions. Upon the filing of a petition for judicial review, the clerk shall calendar the matter for hearing within ~~15~~ 45 days from the date the petition is filed at a session of district court hearing juvenile matters or, if there is no such session, at the next session of juvenile court. The clerk shall send notice of the hearing to the petitioner and to the director who determined the abuse or serious neglect and identified the individual as a responsible individual. Upon the request of a party, the court shall close the hearing to all persons, except officers of the court, the parties, and their witnesses. At the hearing, the director shall have the burden of proving by a preponderance of the evidence the abuse or serious neglect and the identification of the individual seeking judicial review as a responsible individual. The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the court, in its discretion, may permit the admission of any reliable and relevant evidence if the general purposes of the rules of evidence and the interests of justice will best be served by its admission.

...."

SECTION 6. G.S. 7B-324 reads as rewritten:

"**§ 7B-324. Persons ineligible to petition for judicial ~~review; stay of judicial review proceeding pending juvenile court case.~~review.**

(a) An individual who has been identified by a director as a responsible individual may not petition for judicial review if any of the following apply:

(1) The individual is criminally convicted as a result of the same incident. The district attorney shall inform the director of the result of the criminal proceeding.

~~(2) The individual is a respondent in a juvenile court proceeding regarding abuse or neglect resulting from the same incident that concludes with an adjudication of abuse or neglect and a determination that the individual has abused or seriously neglected the juvenile and is a responsible individual.~~

(3) Repealed by Session Laws 2010-90, s. 8, effective July 11, 2010.

(4) After proper notice, the individual fails to file a petition for judicial review with the district court in a timely manner.

(5) Repealed by Session Laws 2010-90, s. 8, effective July 11, 2010.

(b) If an individual seeking judicial review is named as a respondent in a juvenile court case or a defendant in a criminal court case resulting from the same incident, the district court judge may stay the judicial review ~~proceeding or consolidate the proceeding with the juvenile court case. If the juvenile court case is involuntarily dismissed, or concludes without an adjudication of abuse or neglect and a determination that the individual has abused or seriously neglected a juvenile and is a responsible individual, the director shall not place the individual's name on the responsible individuals list. If a juvenile court case concludes with an adjudication of abuse or neglect and a determination that the individual has abused or seriously neglected a juvenile and is a responsible individual, the director shall place that individual's name on the responsible individuals list, consistent with the court's order.~~proceeding."

SECTION 7. G.S. 7B-400 reads as rewritten:

"**§ 7B-400. Venue.**

(a) A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. Notwithstanding G.S. 153A-257, the absence of a juvenile from the juvenile's home pursuant to a protection plan during an assessment or the provision of case management services by a department of social

services shall not change the original venue if it subsequently becomes necessary to file a juvenile petition.

(b) When the director in one county conducts an assessment pursuant to G.S. 7B-302 in another county because a conflict of interest exists, the director in the county conducting the assessment may file a resulting petition in either county.

(c) For good cause, the court may grant motion for change of venue before adjudication. A pre-adjudication change of venue shall not affect the identity of the petitioner.

(d) Any change of venue after adjudication shall be pursuant to G.S. 7B-900.1."

SECTION 8. G.S. 7B-401 reads as rewritten:

"**§ 7B-401. Pleading and process.**

(a) The pleading in an abuse, neglect, or dependency action is the petition. The process in an abuse, neglect, or dependency action is the summons.

(b) If the court has retained jurisdiction over a juvenile whose custody was granted to a parent and there are no periodic judicial reviews of the placement, the provisions of Article 8 of this subchapter shall apply to any subsequent report of abuse, neglect, or dependency determined by the director of social services to require court action pursuant to G.S. 7B-302."

SECTION 9. Article 4 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-401.1. Parties.**

(a) Petitioner. – Only a county director of social services or the director's authorized representative may file a petition alleging that a juvenile is abused, neglected, or dependent. The petitioner shall remain a party until the court terminates its jurisdiction in the case.

(b) Parents. – The juvenile's parent shall be a party unless one of the following applies:

(1) The parent's rights have been terminated.

(2) The parent has relinquished the juvenile for adoption, unless the court orders that the parent be made a party.

(3) The parent has been convicted under G.S. 14-27.2 or G.S. 14-27.3 for an offense that resulted in the conception of the juvenile.

(c) Guardian. – A person who is the child's court-appointed guardian of the person or general guardian when the petition is filed shall be a party. A person appointed as the child's guardian pursuant to G.S. 7B-600 shall automatically become a party but only if the court has found that the guardianship is the permanent plan for the juvenile.

(d) Custodian. – A person who is the juvenile's custodian, as defined in G.S. 7B-101(8), when the petition is filed shall be a party. A person to whom custody of the juvenile is awarded in the juvenile proceeding shall automatically become a party but only if the court has found that the custody arrangement is the permanent plan for the juvenile.

(e) Caretaker. – A caretaker shall be a party only if (i) the petition includes allegations relating to the caretaker, (ii) the caretaker has assumed the status and obligation of a parent, or (iii) the court orders that the caretaker be made a party.

(f) The Juvenile. – The juvenile shall be a party.

(g) Removal of a Party. – If a guardian, custodian, or caretaker is a party, the court may discharge that person from the proceeding, making the person no longer a party, if the court finds that the person does not have legal rights that may be affected by the action and that the person's continuation as a party is not necessary to meet the juvenile's needs.

(h) Intervention. – Except as provided in G.S. 7B-1103(b), the court shall not allow intervention by a person who is not the juvenile's parent, guardian, custodian, or caretaker but may allow intervention by another county department of social services that has an interest in the proceeding. This section shall not prohibit the court from consolidating a juvenile proceeding with a civil action or claim for custody pursuant to G.S. 7B-200."

SECTION 10. G.S. 7B-402 reads as rewritten:

"**§ 7B-402. Petition.**

(a) The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of ~~the juvenile's parent, guardian, or custodian,~~each party as determined by G.S. 7B-401.1, and allegations of facts sufficient to invoke jurisdiction over the juvenile. ~~A petition alleging that a juvenile is abused or neglected may also allege and seek a determination that a respondent is a responsible individual as defined in G.S. 7B-101(18a). A person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need not be named in the petition.~~ The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

(b) The petition, or an affidavit attached to the petition, shall contain the information required by G.S. 50A-209.

(c) Sufficient copies of the petition shall be prepared so that copies will be available for each ~~parent if living separate and apart, the guardian, custodian, or caretaker,~~party named in the petition, except the juvenile, and for the juvenile's guardian ad litem, the social worker, and any person determined by the court to be a necessary party.

(d) If the petition is filed in a county other than the county of the juvenile's residence, the petitioner shall provide a copy of the petition and any notices of hearing to the director of the department of social services in the county of the juvenile's residence."

SECTION 11. G.S. 7B-406 reads as rewritten:

"**§ 7B-406. Issuance of summons.**

(a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons to ~~the parent, guardian, custodian, or caretaker~~each party named in the petition, except the juvenile, requiring them to appear for a hearing at the time and place stated in the summons. ~~No summons is required for any person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile.~~ A copy of the petition shall be attached to each summons. Service of the summons shall be completed as provided in G.S. 7B-407, but the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor.

(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include each of the following:

(1) Notice of the nature of the proceeding.

(2) Notice of any right to counsel and information about how ~~to~~ a parent may seek the appointment of counsel prior to a ~~hearing.~~hearing if provisional counsel is not identified.

~~(2a) Notice that, if the petition alleges and the court determines that the respondent is a responsible individual, the respondent's name will be placed on the responsible individuals list as provided in G.S. 7B-311, and that the Department of Health and Human Services may provide information from the list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.~~

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State.

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

e. May, upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent.

(c) The summons shall advise the parent that upon service, jurisdiction over that person is obtained and that failure to comply with any order of the court pursuant to G.S. 7B-904 may cause the court to issue a show cause order for contempt.

(d) A summons shall be directed to the person summoned to appear and shall be delivered to any person authorized to serve process."

SECTION 12. G.S. 7B-407 reads as rewritten:

"**§ 7B-407. Service of summons.**

The summons shall be served under G.S. 1A-1, Rule 4(j) upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court.

If ~~the parent, guardian, custodian, or caretaker entitled to receive a summons cannot be found by a diligent effort, the court may authorize service of the summons and petition~~service by publication under G.S. 1A-1, ~~Rule 4(j1). The~~Rule 4(j1) is required, the cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the court may direct.

~~If the parent, guardian, custodian, or caretaker is served as herein provided and fails without reasonable cause to appear and to bring the juvenile before the court, the parent, guardian, custodian, or caretaker may be proceeded against as for contempt of court.~~"

SECTION 13. G.S. 7B-505 reads as rewritten:

"**§ 7B-505. ~~Place of~~Placement while in nonsecure custody.**

(a) A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care; or

(2) A facility operated by the department of social services; or

(3) Any other home or facility, including a relative's home approved by the court and designated in the order.

(b) In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile.

(c) If the court does not place the juvenile with a relative, the court may consider whether nonrelative kin is willing and able to provide proper care and supervision of the juvenile in a safe home. Nonrelative kin is an individual having a substantial relationship with the juvenile. In the case of a juvenile member of a State-recognized tribe as set forth in G.S. 143B-407(a), nonrelative kin also includes any member of a State-recognized tribe or a member of a federally recognized tribe, whether or not there is a substantial relationship with the juvenile. The court may order the Department to notify the juvenile's State-recognized tribe

of the need for nonsecure custody for the purpose of locating relatives or nonrelative kin for placement. The court may order placement of the juvenile with nonrelative kin if the court finds the placement is in the juvenile's best interests.

(d) In placing a juvenile in nonsecure custody under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter."

SECTION 14. G.S. 7B-506 reads as rewritten:

"**§ 7B-506. Hearing to determine need for continued nonsecure custody.**

...

(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 the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The ~~State~~ petitioner 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.

...

(g) ~~Reserved.~~ In addition to the hearings required under this section, any party may schedule a hearing on the issue of placement.

(h) At each hearing to determine the need for continued custody, the court ~~shall:~~ shall determine the following:

(1) Inquire as to the identity and location of any missing parent and ~~as to~~ whether paternity is at issue. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent, as well as efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts aimed at determining the identity and location of any missing parent, as well as specific efforts aimed at establishing paternity.

(2) Inquire about efforts made to identify and notify relatives as potential resources for placement or support and as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this ~~Chapter; and~~ Chapter.

(2a) If the court does not place the juvenile with a relative, the court may consider whether nonrelative kin is willing and able to provide proper care and supervision of the juvenile in a safe home. Nonrelative kin is an individual having a substantial relationship with the juvenile. In the case of a juvenile member of a State-recognized tribe as set forth in G.S. 143B-407(a),

nonrelative kin also includes any member of a State-recognized tribe or a member of a federally recognized tribe, whether or not there is a substantial relationship with the juvenile. The court may order the Department to notify the juvenile's State-recognized tribe of the need for nonsecure custody for the purpose of locating relatives or nonrelative kin for placement. The court may order placement of the juvenile with nonrelative kin if the court finds the placement is in the juvenile's best interests.

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

SECTION 15. G.S. 7B-507(c) reads as rewritten:

"(c) When the court determines that reunification efforts are not required or shall cease, the court shall order a plan for permanence as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. If the court's determination to cease reunification efforts is made in a hearing that was duly and timely noticed as a permanency planning hearing, then the court may immediately proceed to consider all of the criteria contained in ~~G.S. 7B-907(b),~~G.S. 7B-906.1(e), make findings of fact, and set forth the best plan of care to achieve a safe, permanent home within a reasonable period of time. If the court's decision to cease reunification efforts arises in any other hearing, the court shall schedule a subsequent hearing within 30 days to address the permanent plan in accordance with ~~G.S. 7B-907.~~G.S. 7B-906.1. At any hearing at which the court orders that reunification efforts shall cease, the affected parent, guardian, or custodian may give notice to preserve the right to appeal that order in accordance with G.S. 7B-1001. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that party sought to offer in opposition to cessation of reunification that the court refused to admit."

SECTION 16. G.S. 7B-600 reads as rewritten:

"**§ 7B-600. Appointment of guardian.**

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the Armed Forces of the United States, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is ~~in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is~~ the permanent plan for the juvenile and appoints a guardian under this section, the guardian ~~is~~ becomes a party to the ~~proceeding, the~~proceeding. The court may ~~not~~ terminate the guardianship ~~or order that the juvenile be reintegrated into a parent's home unless~~only if (i) the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, ~~that~~ (ii) the guardian is unfit, ~~that~~ (iii) the guardian has neglected a guardian's duties, or ~~that~~ (iv) the guardian is unwilling or unable to continue assuming a guardian's duties.

(b1) If a party files a motion ~~or petition under G.S. 7B-906~~under G.S. 7B-906.1 or G.S. 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person of the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case.

(c) If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 17. G.S. 7B-602 reads as rewritten:

"**§ 7B-602. Parent's right to counsel; guardian ad litem.**

(a) In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. When a petition is filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall appoint provisional counsel for each parent named in the petition in accordance with rules adopted by the Office of Indigent Defense Services and shall indicate the appointment on the juvenile summons or attached notice. At the first hearing, the court shall dismiss the provisional counsel if the respondent parent:

(1) Does not appear at the hearing;

(2) Does not qualify for court-appointed counsel;

(3) Has retained counsel; or

(4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent.

The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(a1) A parent qualifying for appointed counsel may be permitted to proceed without the assistance of counsel only after the court examines the parent and makes findings of fact sufficient to show that the waiver is knowing and voluntary. The court's examination shall be reported as provided in G.S. 7B-806.

(b) In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent who is under the age of 18 years and who is not married or otherwise emancipated. The appointment of a guardian ad litem under this subsection shall not affect the minor parent's entitlement to a guardian ad litem pursuant to G.S. 7B-601 in the event that the minor parent is the subject of a separate juvenile petition.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, ~~Rule 17, if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.~~Rule 17.

(d) The parent's counsel shall not be appointed to serve as the guardian ad litem and the guardian ad litem shall not act as the parent's attorney. Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

~~(e) Guardians ad litem appointed under this section may engage in all of the following practices:~~

~~(1) Helping the parent to enter consent orders, if appropriate.~~

~~(2) Facilitating service of process on the parent.~~

~~(3) Assuring that necessary pleadings are filed.~~

~~(4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.~~"

SECTION 18. Article 8 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-800.1. Pre-adjudication hearing.**

(a) Prior to the adjudicatory hearing, the court shall consider the following:

(1) Retention or release of provisional counsel.

(2) Identification of the parties to the proceeding.

(3) Whether paternity has been established or efforts made to establish paternity, including the identity and location of any missing parent.

(4) Whether relatives have been identified and notified as potential resources for placement or support.

(5) Whether all summons, service of process, and notice requirements have been met.

(6) Any pretrial motions, including (i) appointment of a guardian ad litem in accordance with G.S. 7B-602, (ii) discovery motions in accordance with G.S. 7B-700, (iii) amendment of the petition in accordance with G.S. 7B-800, or (iv) any motion for a continuance of the adjudicatory hearing in accordance with G.S. 7B-803.

(7) Any other issue that can be properly addressed as a preliminary matter.

(b) The pre-adjudication hearing may be combined with a hearing on the need for nonsecure custody or any pretrial hearing or conducted in accordance with local rules.

(c) The parties may enter stipulations in accordance with G.S. 7B-807 or enter a consent order in accordance with G.S. 7B-801."

SECTION 19. G.S. 7B-803 reads as rewritten:

"**§ 7B-803. Continuances.**

The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile. Resolution of a pending criminal charge against a respondent arising out of the same transaction or occurrence as the juvenile petition shall not be the sole extraordinary circumstance for granting a continuance."

SECTION 20. G.S. 7B-805 reads as rewritten:

"**§ 7B-805. Quantum of proof in adjudicatory hearing.**

The allegations in a petition alleging that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence. ~~Allegations in a petition alleging that a respondent is a responsible individual who has abused or seriously neglected a juvenile shall be proved by a preponderance of the evidence.~~"

SECTION 21. G.S. 7B-807 reads as rewritten:

"**§ 7B-807. Adjudication.**

(a) If the court finds from the evidence, including stipulations by a party, that the allegations in the petition have been proven by clear and convincing evidence, the court shall so state. A record of specific stipulated adjudicatory facts shall be made by either reducing the facts to a writing, signed by each party stipulating to them and submitted to the court; or by reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them. If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice, and if the juvenile is in nonsecure custody, the juvenile shall be released to the parent, guardian, custodian, or caretaker.

~~(a1) After an adjudication that a juvenile is abused or neglected, if the petition alleges and the court determines by a preponderance of the evidence that a respondent has abused or seriously neglected a juvenile and is a responsible individual, the court shall order the placement of that individual's name on the responsible individuals list as provided in G.S. 7B-311.~~

(b) The adjudicatory order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 22. 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 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, <u>including testimony or evidence from any person who is not a party,</u> 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.

At the dispositional hearing, the court shall inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings of the efforts undertaken to locate the missing parent and to serve that parent and efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts in determining the identity and location of any missing parent and specific efforts in establishing paternity. The court shall also inquire about efforts made to identify and notify relatives as potential resources for placement or support."

SECTION 23. G.S. 7B-905 reads as rewritten:

"**§ 7B-905. Dispositional order.**

(a) The dispositional order shall be in writing, signed, and entered no later than 30 days from the completion of the hearing, and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested. If the order is not entered within 30 days following completion of the hearing, the clerk

of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(b) A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by ~~G.S. 7B-906~~G.S. 7B-906.1 be held within 90 days from of the date of the dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order shall comply with the requirements of G.S. 7B-507. ~~Any dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, or under which the juvenile's placement is continued outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court. If the director subsequently makes a good faith determination that the visitation plan may not be in the best interests of the juvenile or consistent with the juvenile's health and safety, the director may temporarily suspend all or part of the visitation plan. The director shall not be subjected to any motion to show cause for this suspension, but shall expeditiously file a motion for review.~~

(d) When a county department of social services having custody or placement responsibility of a juvenile intends to change the juvenile's placement, the department shall give the guardian ad litem for the juvenile notice of its intention unless precluded by emergency circumstances from doing so. Where emergency circumstances exist, the department of social services shall notify the guardian ad litem or the attorney advocate within 72 hours of the placement change, unless local rules require notification within a shorter time period."

SECTION 24. Article 9 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-905.1. Visitation.**

(a) An order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile's placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile's health and safety. The court may specify in the order conditions under which visitation may be suspended.

(b) If the juvenile is placed or continued in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved or ordered by the court. The plan shall indicate the minimum frequency and length of visits and whether the visits shall be supervised. Unless the court orders otherwise, the director shall have discretion to determine who will supervise visits when supervision is required, to determine the location of visits, and to change the day and time of visits in response to scheduling conflicts, illness of the child or party, or extraordinary circumstances. The director shall promptly communicate a limited and temporary change in the visitation schedule to the affected party. Any ongoing change in the visitation schedule shall be communicated to the party in writing and state the reason for the change.

If the director makes a good faith determination that the visitation plan is not consistent with the juvenile's health and safety, the director may temporarily suspend all or part of the visitation plan. The director shall not be subject to any motion to show cause for this suspension but shall expeditiously file a motion for review.

(c) If the juvenile is placed or continued in the custody or guardianship of a relative or other suitable person, any order providing for visitation shall specify the minimum frequency

and length of the visits and whether the visits shall be supervised. The court may authorize additional visitation as agreed upon by the respondent and custodian or guardian.

(d) If the court retains jurisdiction, all parties shall be informed of the right to file a motion for review of any visitation plan entered pursuant to this section. Upon motion of any party and after proper notice and a hearing, the court may establish, modify, or enforce a visitation plan that is in the juvenile's best interest. Prior to or at the hearing, the court may order the department and guardian ad litem to investigate and make written recommendations as to appropriate visitation and give testimony concerning its recommendations. For resolution of issues related to visitation, the court may order the parents, guardian, or custodian to participate in custody mediation where there is a program established pursuant to G.S. 7A-494. In referring a case to custody mediation, the court shall specify the issue or issues for mediation, including, but not limited to, whether or not visitation shall be supervised and whether overnight visitation may occur. Custody mediation shall not permit the participants to consent to a change in custody. A copy of any agreement reached in custody mediation shall be provided to all parties and counsel and shall be approved by the court. The provisions of G.S. 50-13.1(d) through (f) apply to this section."

SECTION 25. G.S. 7B-906 and G.S. 7B-907 are repealed.

SECTION 26. Article 9 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-906.1. Review and permanency planning hearings.**

(a) In any case where custody is removed from a parent, guardian, or custodian, 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. Within 12 months of the date of the initial order removing custody, there shall be a review hearing designated as a permanency planning hearing. Review hearings after the initial permanency planning hearing shall be designated as subsequent permanency planning hearings. The 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.

(b) The director of social services shall make a timely request to the clerk to calendar each 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 (i) the parents, (ii) the juvenile if 12 years of age or more, (iii) the guardian, (iv) the person providing care for the juvenile, (v) the custodian or agency with custody, (vi) the guardian ad litem, and (vii) any other person or agency the court may specify. The department of social services shall either provide to the clerk the name and address of the person providing care for the juvenile for notice under this subsection or file written documentation with the clerk that the juvenile's current care provider was sent notice of hearing. Nothing in this subsection shall be construed to make the person providing care for the juvenile a party to the proceeding solely based on receiving notice and the right to be heard.

(c) At each hearing, the court shall consider information from the parents, the juvenile, the guardian, any person providing care for the juvenile, the custodian or agency with custody, the guardian ad litem, and any other person or agency that will aid in the court's review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, or testimony or evidence from any person that is not a party, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(d) At each hearing, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the juvenile with either parent whether or not the juvenile resided with the parent at the time of removal or the guardian or custodian from whom the child was removed.

(2) Reports on visitation that has occurred and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1.

(3) Whether efforts to reunite the juvenile with either parent clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time. The court shall consider efforts to reunite regardless of whether the juvenile resided with the parent, guardian, or custodian at the time of removal. If the court determines efforts would be futile or inconsistent, the court shall consider a permanent plan of care for the juvenile.

(4) Reports on the placements the juvenile has had, the appropriateness of the juvenile's current foster care placement, and the goals of the juvenile's foster care plan, including the role the current foster parent will play in the planning for the juvenile.

(5) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.

(6) When and if termination of parental rights should be considered.

(7) Any other criteria the court deems necessary.

(e) At any permanency planning hearing where the juvenile is not placed with a parent, the court shall additionally consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be placed with a parent within the next six months and, if not, why such placement is not in the juvenile's best interests.

(2) Where the juvenile's placement with a parent is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established and, if so, the rights and responsibilities that should remain with the parents.

(3) Where the juvenile's placement with a parent is unlikely within six months, whether adoption should be pursued and, if so, any barriers to the juvenile's adoption.

(4) Where the juvenile's placement with a parent is unlikely within six months, whether the juvenile should remain in the current placement, or be placed in another permanent living arrangement and why.

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile.

(6) Any other criteria the court deems necessary.

(f) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services and has been in placement outside the home for 12 of the most recent 22 months, or a court of competent jurisdiction has determined that the parent (i) has abandoned the child, (ii) has committed murder or voluntary manslaughter of another child of the parent, or (iii) has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the director of the department of social services shall initiate a proceeding to terminate the parental rights of the parent unless the court finds any of the following:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person.

(2) The court makes specific findings as to why the filing of a petition for termination of parental rights is not in the best interests of the child.

(3) The department of social services has not provided the juvenile's family with services the department deems necessary when reasonable efforts are still required to enable the juvenile's return to a safe home.

(g) At the conclusion of each permanency planning hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time.

(h) The order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(i) The court may maintain the juvenile's placement under review or order a different placement, appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600, or order any disposition authorized by G.S. 7B-903, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile.

(j) If the court determines that the juvenile shall be placed in the custody of an individual other than a parent or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.

(k) If at any time custody is placed with a parent or findings are made in accordance with subsection (n) of this section, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

(l) If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7B-507 shall apply to any order entered under this section.

(m) If the court finds that a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the entry of the order unless the court makes written findings regarding why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed.

(n) Notwithstanding other provisions of this Article, the court may waive the holding of hearings required by this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months if the court finds by clear, cogent, and convincing evidence each of the following:

(1) The juvenile has resided in the placement for a period of at least one year.

(2) The placement is stable and continuation of the placement is in the juvenile's best interests.

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months.

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion.

(5) The court order has designated the relative or other suitable person as the juvenile's permanent custodian or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with subsection (n) of this section that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

SECTION 27. 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, ~~the foster parent, relative, or preadoptive parent~~the person 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 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, the ~~foster parent, relative, or preadoptive parent~~person providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. The department of social services shall either provide to the clerk the name and address of the ~~foster parent, relative, or preadoptive parent~~person providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, the ~~foster parent, relative, or preadoptive parent~~person 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 the ~~foster parent, relative, or preadoptive parent~~person a party to the proceeding solely based on receiving notice and 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 and make written findings regarding the following that are relevant:

(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.

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(4) Whether the current placement is in the juvenile's best interest.

(d) The court, after making findings of fact, shall do one of the following:

(1) Affirm the county department's or child-placing agency's plans.

(2) If a juvenile is not placed with prospective adoptive ~~parents;~~parents as selected in G.S. 7B-1112.1, order a placement or different plan the court finds to be in the juvenile's best interest after considering the department's recommendations.

In either case, the court may require specific additional steps that are necessary to accomplish a permanent placement that is in the best interests of the juvenile.

(e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for the review, within 10 days of receiving notice that the adoption decree has been entered, the department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not be filed in the court file. The review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) Repealed by Session Laws 2011-295, s. 10, effective October 1, 2011, and applicable to actions filed or pending on or after that date."

SECTION 28. 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:~~matters. The review shall be held within six months of accepting a relinquishment of a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes unless the juvenile has become the subject of a decree of adoption.

~~(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) Repealed by 2007-276, s. 6, effective October 1, 2007.

(c) Notification of the court under this section shall be by a petition for ~~review. The petition shall set forth the circumstances necessitating the review under subsection (a) of this section.~~review or motion for review, if the court is exercising jurisdiction over the juvenile. 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 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 or who has relinquished the juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes 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 29. G.S. 7B-911 reads as rewritten:

"**§ 7B-911. Civil child custody order.**

(a) ~~After making proper findings at a dispositional hearing or any subsequent hearing,~~ Upon placing custody with a parent or other appropriate person, the court ~~on its own motion or the motion of a party may award~~shall determine whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and ~~50-13.7, as provided in this section, and terminate the court's jurisdiction in the juvenile proceeding.~~50-13.7.

(b) When the court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.

If the order is filed in an existing civil action and the person to whom the court is awarding custody is not a party to that action, the court shall order that the person be joined as a party and that the caption of the case be changed accordingly. The order shall resolve any pending claim for custody and shall constitute a modification of any custody order previously entered in the action.

If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The civil filing fee is waived unless the court orders one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. The Administrative Office of the Courts may adopt rules and shall develop and make available appropriate forms for establishing a civil file to implement this section.

(c) ~~The court may enter a civil custody order under this section and terminate the court's jurisdiction in the juvenile proceeding only if:~~When entering an order under this section, the court shall satisfy the following:

(1) ~~In the civil custody order the court makes~~Make findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to ~~G.S. 50-13.7; and~~G.S. 50-13.7.

(2) ~~In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:~~Make the following findings:

a. ~~That there~~There is not a need for continued State intervention on behalf of the juvenile through a juvenile court ~~proceeding; and~~proceeding.

b. ~~That at~~At least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed."

SECTION 30. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings ~~in accordance with G.S. 7B-907~~ that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

SECTION 31. G.S. 7B-1001 reads as rewritten:

"**§ 7B-1001. Right to appeal.**

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of Appeals. Only the following juvenile matters may be appealed:

(1) Any order finding absence of jurisdiction.

(2) Any order, including the involuntary dismissal of a petition, which in effect determines the action and prevents a judgment from which appeal might be taken.

(3) Any initial order of disposition and the adjudication order upon which it is based.

(4) Any order, other than a nonsecure custody order, that changes legal custody of a juvenile.

(5) An order entered under G.S. 7B-507(c) with rights to appeal properly ~~preserved as provided in that subsection,~~preserved, as follows:

a. The Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:

1. A motion or petition to terminate the parent's rights is heard and granted.

2. The order terminating parental rights is appealed in a proper and timely manner.

3. The order to cease reunification is identified as an issue in the record on appeal of the termination of parental rights.

b. A party who is a parent shall have the right to appeal the order if no termination of parental rights petition or motion is filed within 180 days of the order.

c. A party who is a custodian or guardian shall have the right to immediately appeal the order.

(6) Any order that terminates parental rights or denies a petition or motion to terminate parental rights.

(b) Notice of appeal and notice to preserve the right to appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58.

(c) Notice of appeal shall be signed by both the appealing party and counsel for the appealing party, if ~~any, and shall be taken only by following direct instruction of the appealing party after the conclusion of the proceeding.~~any. In the case of an appeal by a juvenile, notice of appeal shall be signed by the guardian ad litem attorney advocate."

SECTION 32. G.S. 7B-1101.1 reads as rewritten:

"**§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the

petition in accordance with rules adopted by the Office of Indigent Defense Services and shall indicate the appointment on the juvenile summons. At the first hearing after service upon the respondent parent, the court shall dismiss the provisional counsel if the respondent parent:

(1) Does not appear at the hearing;
(2) Does not qualify for court-appointed counsel;
(3) Has retained counsel; or
(4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent. The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(a1) A parent qualifying for appointed counsel may be permitted to proceed without the assistance of counsel only after the court examines the parent and makes findings of fact sufficient to show that the waiver is knowing and voluntary. This examination shall be reported as provided in G.S. 7B-806.

(b) In addition to the right to appointed counsel under subsection (a) of this section, a guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17, to represent any parent who is under the age of 18 years and who is not married or otherwise emancipated.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, ~~Rule 17 if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.~~Rule 17.

(d) The parent's counsel shall not be appointed to serve as the guardian ad litem and the guardian ad litem shall not act as the parent's attorney. Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

~~(e) Guardians ad litem appointed under this section may engage in all of the following practices:~~

~~(1) Helping the parent to enter consent orders, if appropriate.~~
~~(2) Facilitating service of process on the parent.~~
~~(3) Assuring that necessary pleadings are filed.~~
~~(4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.~~

(f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel."

SECTION 33. G.S. 7B-1106 is amended by adding the following new subsection to read:

"(a2) If an attorney has been appointed for a respondent pursuant to G.S. 7B-602 and has not been relieved of responsibility, a copy of all pleadings and other papers required to be served on the respondent shall be served on the respondent's attorney pursuant to procedures established under G.S. 1A-1, Rule 5."

SECTION 34. G.S. 7B-1109(b) reads as rewritten:

"(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, counsel shall be appointed to represent them in accordance with

rules adopted by the Office of Indigent Defense Services. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition or motion. ~~In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198.~~"

SECTION 35. G.S. 7B-1111(a)(5) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

...

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental ~~rights:~~rights, done any of the following:

a. ~~Established paternity judicially or by affidavit which has been filed~~Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services; provided, the ~~court~~ petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and ~~shall incorporate into the case record~~ the Department's certified ~~reply; or~~reply shall be submitted to and considered by the court.

b. Legitimated the juvenile pursuant to provisions of ~~G.S. 49-10~~G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific ~~purpose; or~~purpose.

c. Legitimated the juvenile by marriage to the mother of the ~~juvenile; or~~juvenile.

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

e. Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding.

...."

SECTION 36. G.S. 7B-1112.1 reads as rewritten:

"**§ 7B-1112.1. Selection of adoptive parents.**

The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. In selecting the adoptive parents, any current placement provider wanting to adopt the child shall be considered. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five business days. The county department of social services shall notify the guardian ad litem and the foster parents of the selection of prospective adoptive parents within 10 days of the selection and before the filing of the adoption petition. If the guardian ad litem disagrees with the selection of adoptive ~~parents,~~parents or the foster parents want to adopt the juvenile and were not selected as adoptive parents, the guardian ad litem or foster parents shall file a motion within 10 days of the department's notification and schedule the case for hearing on the next juvenile calendar. The department shall not change the juvenile's placement to the prospective adoptive parents unless the time period for filing a motion has expired and no motion has been filed. The Department shall provide a copy of a motion for judicial review of adoption selection to the foster parents not selected. Nothing in this section shall be construed to make the foster parents a party to the proceeding solely based on receiving notification and the right to be heard by filing a motion. In hearing ~~the~~ any motion, the court shall consider the recommendations of the agency and the guardian ad litem and other facts related to the

selection of adoptive parents. The court shall then determine whether the proposed adoptive placement is in the juvenile's best interests."

SECTION 37. G.S. 7B-1114 reads as rewritten:

"**§ 7B-1114. Reinstatement of parental rights.**

(a) A juvenile whose parent's rights have been ~~terminated pursuant to this Article,~~terminated, the guardian ad litem attorney, or a county department of social services with custody of the juvenile may file a motion to reinstate the parent's rights if all of the following conditions are satisfied:

(1) The juvenile is at least 12 years of age or, if the juvenile is younger than 12, the motion alleges extraordinary circumstances requiring consideration of the motion.

(2) The juvenile does not have a legal parent, is not in an adoptive placement, and is not likely to be adopted within a reasonable period of time.

(3) The order terminating parental rights was entered at least three years before the filing of the motion, unless the court has found or the juvenile's attorney advocate and the county department of social services with custody of the juvenile stipulate that the juvenile's permanent plan is no longer adoption.

...

(i) At any hearing under this section, after making proper findings of fact and conclusions of law, the court may do one of the following:

(1) Enter an order for visitation in accordance with ~~G.S. 7B-905(c).~~G.S. 7B-905.1.

(2) Order that the juvenile be placed in the former parent's home and supervised by the department of social services either directly or, when the former parent lives in a different county, through coordination with the county department of social services in that county, or by other personnel as may be available to the court, subject to conditions applicable to the former parent as the court may specify. Any order authorizing placement with the former parent shall specify that the juvenile's placement and care remain the responsibility of the county department of social services with custody of the juvenile and that the department is to provide or arrange for the placement of the juvenile.

...."

SECTION 38. G.S. 7B-1203(2) reads as rewritten:

"**§ 7B-1203. Alternative plans.**

A district court district shall be granted a waiver from the implementation of a local program if the Administrative Office of the Courts determines that the following conditions are met:

...

(2) The proposed alternative plan will require no greater proportion of State funds than the district court district's abuse and neglect caseload represents to the State's abuse and neglect caseload. Computation of abuse and neglect caseloads shall include such factors as the juvenile population, number of substantiated abuse and neglect reports, number of abuse and neglect petitions, number of abused and neglected juveniles in care to be reviewed pursuant to ~~G.S. 7B-906,~~G.S. 7B-906.1, nature of the district's district court caseload, and number of petitions to terminate parental rights."

SECTION 39. G.S. 7B-2503(1)c. reads as rewritten:

"**§ 7B-2503. Dispositional alternatives for undisciplined juveniles.**

The following alternatives for disposition shall be available to the court exercising jurisdiction over a juvenile who has been adjudicated undisciplined. In placing a juvenile in

out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. The court may combine any of the applicable alternatives when the court finds it to be in the best interests of the juvenile:

(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

c. If the director of the department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of a department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with ~~G.S. 7B-906.~~G.S. 7B-906.1. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or the judge's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 40. G.S. 7B-2506(1)c. reads as rewritten:

"**§ 7B-2506. Dispositional alternatives for delinquent juveniles.**

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives in accordance with the dispositional structure set forth in G.S. 7B-2508:

(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

c. If the director of the county department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in

the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with ~~G.S. 7B-906.~~G.S. 7B-906.1. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 41. This act becomes effective October 1, 2013, and applies to actions filed or pending on or after that date.

HOUSE BILL 350:
Court Improvem't Project Juv Law Changes.- AB

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 10, 2013
Introduced by:	Reps. Jordan, C. Graham	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 350 would make various changes to the juvenile code pursuant to revisions proposed by the Court Improvement Project.

BACKGROUND: The Court Improvement Program (CIP) was established by grant as part of a Federal initiative to support family preservation, prevention of child abuse, and services to families at risk. The grant was initially authorized by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66). Its purpose is to assess and improve court processes related to foster care and adoption. The Administrative Office of the Courts (AOC) has received federal funding for the project since 1995. The Juvenile Code Revision Subcommittee of the North Carolina Court Improvement Project is an interdisciplinary committee comprised of individual representatives from the various stakeholders in juvenile court proceedings. involving abuse, neglect, dependency, and termination of parental rights. The Subcommittee proposes revisions to statutes governing juvenile court proceedings.

[As introduced, this bill was identical to S472, as introduced by Sen. Blue, which is currently in Senate Judiciary I.]

BILL ANALYSIS: House Bill 350 would make a number of changes to the juvenile code, including the following:

Definitions

Section 1: deletes definitions of "*Community based program*", "and "*Shelter care*" and adds a definition for "*Return home or reunification.*" Limits application of the term "*Custodian*" to "[t]he person or agency that has been awarded custody of a juvenile by a court."

Jurisdiction

Section 2: declares that a court will have jurisdiction over the parent, guardian, custodian, or caretaker (was, parent or guardian) of a juvenile who has been adjudicated abused, neglected, or dependent provided that the parent, guardian, custodian, or caretaker has (1) been properly served with a summons, (2) waived service of process, or (3) automatically become a party to the action.

Responsible Individuals – *The Department of Health and Human Services(DHHS) maintains a list of "responsible individuals" -- a defined term which means a parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile. The Department is authorized to provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.*

Section 3: provides that the name of a person identified as a "responsible individual" will be placed on the responsible individuals list maintained by DHHS after the court determines the person is a responsible individual as a result of a hearing on the individual's petition for judicial review (was,

determination could also be made based on a juvenile petition alleging and seeking a determination that the person is a responsible individual).

Section 4 specifies that the director of social services (DSS director) must make a diligent effort to locate a person identified as a responsible individual before sending notice to the individual by certified mail, return receipt requested (was, certified mail, restricted delivery, return receipt requested). Deletes a requirement that the director give directions on filing and serving a petition for judicial review.

Section 5: provides that if the DSS director cannot show that an individual has received actual notice, the director is prohibited from placing a person on the responsible individuals list until there is an ex parte hearing at which a district court judge determines that the director made diligent efforts to find the individual. A finding that the person is evading service is relevant to determining whether the director has made diligent efforts. The bill requires the clerk of court to schedule a hearing on judicial review actions within 45 days (was, 15) from the date that the petition for judicial review is filed at a session of district court hearing juvenile matters, or if there is no such session, at the next session of juvenile court.

Section 6: Deletes provision making a person ineligible to submit a petition for judicial review if the person is a respondent in an abuse or neglect juvenile court proceeding regarding abuse or neglect resulting from the same incident that concludes with an adjudication of abuse or neglect and a determination that the respondent is a responsible individual. Provides that if an individual seeking judicial review is named as a respondent in a juvenile case or a defendant in a criminal case resulting from the same incident, the district court judge may stay the judicial review proceeding.

Venue

Section 7: Provides that removal of a juvenile from the juvenile's home under a protection plan is not a basis for a change in venue if it later becomes necessary to file a juvenile petition. The bill provides that a DSS director in one county who conducts an assessment in another county because of a conflict of interest may file any resulting petition in either of those counties. The court would be authorized to grant a motion for a change of venue for good cause.

Juvenile Proceedings

Section 9: Provides that only a county director of social services or the director's designee may file a petition alleging that a juvenile is abused, neglected, or dependent and the petitioner remains a party until the court terminates its jurisdiction in the case. The juvenile's parent is a party unless (1) the parent's rights have been terminated; (2) the parent has given the child up for adoption, unless the court orders the parent to be a party; or (3) the parent has been convicted of a sexual offense that resulted in the conception of the juvenile. The bill provides criteria for a guardian, custodian, or caretaker as a party in the case, and declares that the juvenile is a party. The bill also provides a basis for removal of a party by the court and prohibits intervention by a person who is not the juvenile's parent, guardian, custodian, or caretaker.

Section 11: Amends the statute pertaining to the issuance of a summons in an action alleging that a juvenile is abused, neglected, or dependent, deleting a requirement that notice of the inclusion of a respondent's name on the responsible individual list be included with the summons.

Section 12: Clarifies that if service by publication is required, the cost of the service by publication is to be advanced by the petitioner and may be charged as court costs. Deletes a provision specifying that parties other than the juvenile, who fail to appear or who fail to cause the juvenile to appear before the court without a reasonable cause, may be held in contempt.

Section 13: Permits the court to place the juvenile in nonsecure custody with nonrelative kin if the court determines that such a placement is in the best interests of the juvenile, and defines nonrelative kin as a person who has a substantial relationship with the juvenile. In the case of a juvenile member of a State-recognized tribe, nonrelative kin also includes any member of a State or federally recognized tribe.

Section 17 specifies that a parent who qualifies for an appointed attorney may be permitted to proceed without an attorney only after the court examines the parent and makes findings of fact sufficient to show that the parent's waiver is knowing and voluntary. The court may appoint a guardian ad litem for a parent who is incompetent. The bill makes it clear the guardian ad litem cannot also serve as the parent's attorney.

Section 18 provides for a pre-adjudication hearing at which time the court will consider a number of factors including identification of parties to the proceeding and any pretrial motions or other issues properly addressed as a preliminary matter.

Section 19 specifies that resolution of a respondent's pending criminal charge arising out of the same events as the juvenile petition cannot be the sole extraordinary circumstance to serve as a basis for granting a continuance.

Section 22 provides that at the dispositional hearing, the court may consider any evidence it finds to be relevant and necessary to determine the needs of the juvenile, including testimony or evidence from a person who is not a party.

Section 24 enacts a new statute to cover the issue of visitation when a court order removes custody of a juvenile from a parent, guardian, or custodian or makes a placement of the child outside of the home. The court's order must provide for appropriate visitation as may be in the best interests of the juvenile, and may also specify conditions under which visitation may be suspended. The bill authorizes a DSS director, upon making a good faith determination that the visitation plan is inconsistent with the juvenile's health and safety, to temporarily suspend all or part of the visitation plan without filing a motion to show cause; however the director must expeditiously file a motion for review. If the court retains jurisdiction, all parties must be informed of the right to file a motion for review of the visitation plan.

Sections 25 and 26 repeal G.S. 7B-906 (Review of custody order) and G.S. 7B-907 (Permanency Planning Hearing) and enact a new statute which combines provisions of the repealed statutes. The bill details the timeline for conducting a review of custody orders and for a review hearing after the dispositional hearing, and specifies criteria regarding content, procedure, and relevant parties to the review hearings. The court may waive the hearings or order that review hearings be held less frequently if the court makes specified findings that (1) the juvenile's placement has been for at least one year, (2) the placement is stable and continuation is in the juvenile's best interest, (3) neither the juvenile's best interest nor the rights of any party necessitate review hearings every six months, (4) all parties have knowledge that that they may file a motion for review at any time to have the matter brought before the court, and (5) the court order has designated a suitable person as the permanent custodian or guardian; the court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

Section 28 provides that within six months of accepting a relinquishment of a juvenile for adoption, a review of the DSS plan for the juvenile must be scheduled for hearing, unless the juvenile has become the subject of a decree of adoption.

Section 31 requires that both the notice of appeal and notice to preserve the right to appeal be given in writing, and that the notice of appeal be signed by both the appealing party and the counsel for the appealing party, if any.

Section 33 requires that a copy of all pleadings and other papers required to be served on a respondent also be served on the respondent's attorney, if one has been appointed.

Section 35 clarifies the findings on which a court may base a determination to terminate the parental rights of the father of a juvenile born out of wedlock.

Section 36 provides that in the selection of adoptive parents, any current placement provider for the child who wants to adopt the child must be considered. Foster parents must be notified of the selection of adoptive parents within 10 days of the selection and before the adoption petition is filed. Also foster parents who want to adopt the juvenile and were not selected as adoptive parents may file a motion within 10 days of the Department's notification and schedule the case for hearing on the next juvenile calendar. The bill provides additional guidelines regarding the selection of adoptive parents and the rights of the foster parents.

The bill makes a number of technical and conforming changes.

EFFECTIVE DATE: The bill would become effective October 1, 2013 and apply to actions filed or pending on or after that date.

HOUSE BILL 465
Second Edition Engrossed 5/15/13

Short Title:	No Possession of Firearms/Undocumented Aliens.	(Public)
Sponsors:	Representatives McNeill, Warren, Faircloth, and Ford (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary, if favorable, Appropriations.	

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT PERSONS WHO ARE NOT LAWFULLY PRESENT IN THIS STATE FROM POSSESSING FIREARMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 64 of the General Statutes is amended by adding a new section to read:

"**§ 64-6. Possession of firearms by persons who are not lawfully present prohibited.**

(a) Prohibited Conduct. – It shall be unlawful for a person who is not lawfully present in the United States to possess a firearm in this State. For purposes of this section, a person not a citizen or national of the United States is not lawfully present in the United States unless the person (i) holds valid documentation issued by or under the authority of the United States government that demonstrates the applicant's legal presence in the United States or (ii) has otherwise been permitted to remain in the United States by the federal government.

(b) Penalty. – A violation of this section shall be a Class I Felony.

(c) Seizure of Unlawfully Possessed Firearms. – Upon a determination that probable cause exists to believe that a firearm is in the possession of a person in violation of this section, all sheriffs and law enforcement officers are authorized to seize the unlawfully possessed firearm in accordance with applicable State law. Any law enforcement agency in possession of the firearm shall retain the item pending a disposition order from a district or superior court judge."

SECTION 2. G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of G.S. 14-269, G.S. 14-269.7, G.S. 64-6, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(4a) Repealed by Session Laws 2005-287, s. 3, effective August 22, 2005.

(4b) By ordering the weapon turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

(5) By ordering such weapon turned over to the North Carolina State Crime Laboratory's weapons reference library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

SECTION 3. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 465:
No Possession of Firearms/Undocumented Aliens

2013-2014 General Assembly

Committee:	Senate Ref to Judiciary II. If fav, re-ref to Finance	**Date:**	June 6, 2013
Introduced by:	Reps. McNeill, Warren, Faircloth, Ford	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***This act makes it a criminal offense for a person who is not lawfully in the United States to possess a firearm. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.***

CURRENT LAW:

It is a federal offense for a person:

- Who is illegally or unlawfully in the United States 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.
- To sell or transfer a firearm to an alien who is illegally or unlawfully in the United States, or has been admitted to the United States under a nonimmigrant visa. [Under certain circumstances, a person with a nonimmigrant visa may possess a firearm].

The penalty for violating either of the above federal laws is ten years imprisonment and/or a $250,000 fine.

BILL ANALYSIS: The act:

- Makes it a Class I felony for a person who is unlawfully in the United States to possess a firearm.
- Defines unlawful presence (absence of documentation of lawful presence or absent authority by the federal government to be in the United States).
- Provides that upon probable cause of a violation, a law enforcement officer may seize the firearm with disposition to be made upon the order of a district or superior court judge.
- Adds the violation to the statute providing the procedures and potential recipients of the firearm by direction of the court upon conviction of the offense.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

NORTH CAROLINA SHERIFFS' ASSOCIATION
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS
OF NORTH CAROLINA

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Craven County

SHERIFF JAMES L. KNIGHT
Edgecombe County

SHERIFF SAM PAGE
Rockingham County

April 16, 2013

Representative Allen McNeill
Legislative Office Building, Room 418C
300 North Salisbury Street
Raleigh, North Carolina 27603-5925

Re: House Bill 465, No Possession of Firearms/Undocumented Aliens

Dear Representative McNeill,

The North Carolina Sheriffs' Association has reviewed House Bill 465, No Possession of Firearms/Undocumented Aliens, and has adopted a position in support of this bill.

Thank you for your leadership in pursuing these legislative changes that will improve public safety in North Carolina.

If you have any questions or need any additional information, please call Gregg Stahl, NCSA Director of Government Relations, at (919) 459-1073; Andrew Cagle, NCSA Government Relations Specialist, at (919) 459-6469; or me at (919) 459-1052.

Sincerely,

Eddie Caldwell

Edmond W. Caldwell, Jr.
Executive Vice President and General Counsel
North Carolina Sheriffs' Association

REPRESENTATIVE ALLEN R. McNEILL
NORTH CAROLINA HOUSE OF REPRESENTATIVES
78TH DISTRICT
RANDOLPH COUNTY MOORE COUNTY

LEGISLATIVE OFFICE
418 C LEGISLATIVE OFFICE BUILDING
RALEIGH, NC 27603-5925
(919) 715-4946
ALLEN.MCNEILL@NCLEG.NET

DISTRICT ADDRESS
4172 NC HIGHWAY 49 S
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ARMCNEILL@RTMC.NET

North Carolina Sheriffs' Association
91 YEARS
1922 - 2013

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 850
Committee Substitute Favorable 5/8/13

Short Title: Possession of Needles/Tell Law Officer. (Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO ALERTS AN OFFICER OF THE PRESENCE OF A HYPODERMIC NEEDLE OR OTHER SHARP OBJECT POSSESSED BY THE PERSON PRIOR TO A SEARCH BY THE OFFICER SHALL NOT BE CHARGED WITH POSSESSION OF DRUG PARAPHERNALIA FOR POSSESSION OF THE NEEDLE OR OTHER SHARP OBJECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.22 is amended by adding a new subsection to read:

"(c) Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether such a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object. The exemption under this subsection does not apply to any other drug paraphernalia that may be present and found during the search. For purposes of this subsection, the term "officer" includes "criminal justice officers" as defined in G.S. 17C-2(3) and a "justice officer" as defined in G.S. 17E-2(3)."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 850:
Possession of Needles/Tell Law Officer

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 6, 2013
Introduced by:	Reps. McNeill, Faircloth, Hardister, Dollar	**Prepared by:**	Hal Pell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 850 would provide that a person who alerts an officer of the presence of a hypodermic needle or other sharp object possessed by the person prior to a search by the officer shall not be charged with possession of drug paraphernalia for possession of the needle or other sharp object.***

BILL ANALYSIS:

House Bill 850 would provide that if (i) prior to searching a person, their premises or their vehicle, (ii) an officer asks a person if they are in possession of a hypodermic needle or sharp object, and (iii) the person discloses the presence of a hypodermic needle or sharp object, then the person shall not be charged or prosecuted for possession of drug paraphernalia for the needle or sharp object. This exemption does not apply to any other drug paraphernalia found during the search.

For purposes of this subsection the term "officer" includes "criminal justice officers" as defined in G.S. 17C-2(3) and a "justice officer" as defined in G.S. 17E-2(3).

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

BACKGROUND:

G.S. 17C-2(3) ...

> (3) Criminal justice officers. – The administrative and subordinate personnel of all the departments, agencies, units or entities comprising the criminal justice agencies who are sworn law-enforcement officers, both State and local, with the power of arrest; State correctional officers; State probation/parole officers; State probation/parole officers-surveillance; officers, supervisory and administrative personnel of local confinement facilities; State juvenile justice officers; chief court counselors; and juvenile court counselors.

G.S. 17E-2(3) ...

> (3) "Justice officer" means:
>
> a. A person who, through the special trust and confidence of the sheriff, has taken the oath of office prescribed by Chapter 11 of the General Statutes as a peace officer in the office of the sheriff. This term includes "deputy sheriffs", "reserve deputy sheriffs", and "special deputy sheriffs", but does not include clerical and support personnel not required to take an oath. The term "special deputy" means a person who, through appointment by the sheriff, becomes an unpaid criminal justice officer to perform a specific act directed by the sheriff; or

b. A person who, through the special trust and confidence of the sheriff, has been appointed as a detention officer by the sheriff; or

c. A person who is either the administrator or other custodial personnel of district confinement facilities as defined in G.S. 153A-219; however, nothing in this Chapter transfers any supervisory or administrative control over employees of district confinement facilities to the office of the sheriff; or

d. A person who, through the special trust and confidence of the sheriff, is under the direct supervision and control of the sheriff and serves as a telecommunicator, or who is presented to the Commission for appointment as a telecommunicator by an employing entity other than the sheriff for the purpose of obtaining certification from the Commission as a telecommunicator.

Susan Sitze, Staff Attorney, significantly contributed to this summary.

HOUSE BILL 611
Second Edition Engrossed 5/7/13

Short Title:	Suspension Removed When Eligibility Met.	(Public)
Sponsors:	Representative W. Brawley (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee B.	

April 9, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO EXPUNGE SUSPENSIONS AND REVOCATIONS ENTERED ON A LIMITED PERMITTEE OR PROVISIONAL LICENSEE'S DRIVING RECORD IF THE STUDENT PROVIDES THE REQUIRED DOCUMENTATION TO THE DIVISION THAT THE STUDENT MEETS THE ELIGIBILITY REQUIREMENTS AND IF THE LIMITED PERMITTEE OR PROVISIONAL LICENSEE HAS NEVER HAD A PRIOR EXPUNCTION FROM THE PERMITTEE'S DRIVING RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-13.2(c1) reads as rewritten:

"(c1) Upon receipt of notification from the proper school authority that a person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n), the Division must expeditiously notify the person that his or her permit or license is revoked effective on the tenth calendar day after the mailing of the revocation notice. The Division must revoke the permit or license of that person on the tenth calendar day after the mailing of the revocation notice. Notwithstanding subsection (d) of this section, the length of revocation must last for the following periods:

(1) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), then the revocation shall last until the person's eighteenth birthday.

(2) If the revocation is because of ineligibility for a driving eligibility certificate under G.S. 20-11(n1), then the revocation shall be for a period of one year.

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), the Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.

(2) A driving eligibility certificate as required under G.S. 20-11(n).

<u>If the Division restores a permit or license that was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1), any record of revocation or suspension shall be expunged by the Division from the person's driving record. The Division shall not expunge a suspension or revocation record if a person has had a prior expunction from the person's driving record for any reason.</u>

For a person whose permit or license was revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n1), the Division shall restore a person's permit or

license before the end of the revocation period, if the person submits to the Division a driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(28), 115D-5(a3), or 115C-566, whichever is applicable, and may not be appealed under this Chapter."

SECTION 2. This act becomes effective December 1, 2013, and applies to reinstatements occurring on or after that date.

HOUSE BILL 611:
Suspension Removed When Eligibility Met

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 10, 2013
Introduced by:	Rep. W. Brawley	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 611 would require the Division of Motor Vehicles to expunge suspensions and revocations entered on a limited permittee or provisional licensee's driving record if the student provides the required documentation to the Division that the student meets eligibility requirements and if the limited permittee or provisional licensee has never had a prior expunction.***

CURRENT LAW: G.S. 20-11 addresses limited learner's permits and provisional drivers licenses to persons less than 18 years old. G.S. 20-11(n) addresses driving eligibility certificates. A person who desires to obtain a permit or license must have a high school diploma or its equivalent or must have a driving eligibility certificate. A driving eligibility certificate must meet certain conditions, including at least one of the following under G.S. 20-11(n)(1):

- The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.
- A substantial hardship would be placed on the person if he or she does not get a certificate.
- The person cannot make progress toward obtaining a high school diploma or its equivalent.

When a school authority notifies the Division that a person no longer meets the eligibility requirements for a driving eligibility certificate, the Division must notify the person that his or her permit is revoked as of the 10th calendar day after the mailing of the notice. If the revocation is because of ineligibility under 20-11(n)(1), the revocation lasts until the person's 18th birthday; however, the Division must restore the person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

- A high school diploma or its equivalent.
- A driving eligibility certificate.

BILL ANALYSIS: House Bill 611 provides that if the Division of Motor Vehicles (DMV) restores a permit or drivers license that has been revoked due to the student's academic standing, the Division must also expunge any record of the revocation or suspension from the person's driving record. The Division would not expunge a suspension or revocation if the person had a prior expunction of the driving record for any reason.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to reinstatements occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 879
Committee Substitute Favorable 4/24/13
Third Edition Engrossed 4/30/13

Short Title: Grand Jurors/Service. (Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT JURORS WHO SERVE THEIR FULL TERM OF SERVICE ON A GRAND JURY SHALL NOT BE REQUIRED TO SERVE AGAIN AS A GRAND JUROR OR AS A JUROR FOR A PERIOD OF SIX YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-3 reads as rewritten:

"**§ 9-3. Qualifications of prospective jurors.**

All persons are qualified to serve as jurors and to be included on the master jury list who are citizens of the State and residents of the county, who have not served as jurors during the preceding two ~~years,~~years or who have not served a full term of service as grand jurors during the preceding six years, who are 18 years of age or over, who are physically and mentally competent, who can understand the English language, who have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (or if convicted of a felony or having pleaded guilty or nolo contendere to an indictment charging a felony have had their citizenship restored pursuant to law), and who have not been adjudged non compos mentis. Persons not qualified under this section are subject to challenge for cause."

SECTION 2. G.S. 9-7 reads as rewritten:

"**§ 9-7. Notation on master jury list of names of jurors who have served; retention.**

(a) The names of persons summoned for jury service and the date or dates on which each person served shall be noted on the master jury list. This information shall be retained for two years, and persons shall be exempt from jury service for a period of two years from the date on which they were discharged from their prior ~~service.~~service, except as provided in subsection (b) of this section.

(b) The names of persons summoned for jury service who served a full term on the grand jury pursuant to G.S. 15A-622, the date or dates on which each person served, and a notation that the person served the full term of service as a grand juror shall be noted on the master list. This information shall be retained for six years, and persons shall be exempt from jury service for a period of six years from the date on which they were discharged from their prior service."

SECTION 3. G.S. 15A-622 reads as rewritten:

"**§ 15A-622. Formation and organization of grand juries; other preliminary matters.**

...

(i) Any grand juror who serves the full term of service under subsection (b) or subsection (h) of this section shall not be required to serve again as a grand juror or as a juror for a period of six years."

SECTION 4. This act becomes effective January 1, 2014.

HOUSE BILL 879:
Grand Jurors/Service

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 6, 2013
Introduced by:	Reps. Davis, Daughtry	**Prepared by:**	Hal Pell
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***The act provides that jurors who serve a full term of service as a grand juror are not required to serve again as a juror for a period of six years. This act is effective when it becomes law.***

CURRENT LAW: A juror who has not served as a juror during the preceding two years is eligible to serve on a jury or a grand jury.

BILL ANALYSIS: The act amends the statutes to provide that a person who has served a full term on a grand jury during the preceding six years is exempt from jury or grand jury duty.

EFFECTIVE DATE: The act is effective on January 1, 2014.

H879-smrk-57(CSRK-32)

O. Walker Reagan
Director

H 8 7 9 - S M R K - 1 0 4 E 3 - V 1

Research Division
(919) 733-2578

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 6-11 TIME: 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Jordan Perry	Durham	McKissick
2. David Kostenberger	Wake Forest	Barefoot
3. Greg Stewart	Garner	Barefoot
4. William Cheung	Taylorsville	Alran
5. Spencer Zachary	Taylorsville	Alran
6. Tyler Hendricks	Greensboro	Berger
7. Daniel Rangel	Greensboro	Berger
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 06/11/13 ROOM: 1124

1. HAL ROACH
2. ROBERT YOUNG
3. ASHLEY MICKENS
4. BILLY FRITSCHER

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 10, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Tucker	Indy Week
Deana Fleming	AOC/GAL
Dawn Spadgenske	Duke U. School of Nursing
Shelly Eisbach	"
Joan Akalaonu	Guardian Ad Litem
Ronald Martin	NC Harm Reduction Coalition
Tessie Castillo	NC Harm Reduction Coalition
Butch Gunnells	NC Bar

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 10, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
J. Bible	BCS
Andrew Cagle	NC Sheriffs' Assn.
Holly West	NC Health News
Penny Griffin	School of Gov.
Chris Sigmann	Intern - Sen. Kinnaird
Angenette Stephenson	DOJ on behalf of DHHS
Chris Agner	DOJ
Cellani Attilio	NC HRC

Senate Committee on Judiciary II
Thursday, June 13, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 26	Strengthen Laws/Vehicle Theft.	Rep. T. Moore
HB 333	Sex Offender Residency/Regis. Amendments.	Rep. Warren Rep. Moffitt Rep. Schaffer Rep. Whitmire
HB 533	Detention of Mentally Ill in Facility.	Rep. Jordan
HB 656	Forfeiture for Speeding to Elude Revisions.	Rep. McNeill Rep. Faircloth Rep. Goodman Rep. Dobson
HB 784	Worthless Check/Present Cashed Check.	Rep. Stone Rep. Dobson Rep. Jordan Rep. Carney
HB 891	Exploitation of Srs/Freeze Defendant's Assets.	Rep. Glazier Rep. McGrady Rep. Insko Rep. Baskerville

Adjournment

Senate Judiciary II Committee
Thursday, June 13, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, June 13, 2013 in room 1124 of the Legislative Building. Spencer Zachary of Taylorsville, William Cheung of Taylorsville, Amanda Pruthi of Durham, MacKenzie Morgan of Charlotte, Jelisa Murray of Raleigh, Amanda Davis of Red Oak, and Tristan Gordon of Monroe served as pages. Senator Allran presided as chair.

H.B. 333 – Sex Offender Residency/Regis. Amendments

Representative Warren was recognized to explain the bill which would make clarifying changes to the law pertaining to registration requirements for persons subject to the Sex Offender and Public Protection Registration Program. Senator Cook moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 533 – Detention of Mentally Ill in Facility

Representative Jordan was recognized to explain the bill. It is a local bill which would grant authority to company police officers employed by a hospital to use appropriate and reasonable force to keep an individual in the facility where the individual is being temporarily detained to obtain an examination by a physician or psychologist pursuant to court order. The bill would apply to Ashe, Cumberland and Wilkes counties only. Brenda Carter, an Attorney with the Research Division, was recognized to answer questions. Senator Cook moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 656 – Forfeiture for Speeding to Elude Revisions

Senator Tucker was recognized to explain the bill and offer an amendment. The bill would revise the laws governing the seizure, forfeiture, and sale of motor vehicles used by defendants in felony speeding to elude arrest cases. The amendment would exempt rental car agencies from having their cars seized. Senator Bingham moved to adopt the amendment and the motion carried. Senator Bingham moved for a favorable report and the motion carried. A copy of the bill, the summary, and the amendment is attached.

H.B. 891 – Exploitation of Srs/Freeze Defendant's Assets

Representative Glazier was recognized to explain the bill. It would allow the district attorney to petition the court to freeze the assets of a defendant charged with exploitation of an elder or disabled adult, and would establish a procedure to petition the court for the freezing or seizure of assets. Senator Davis moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 784 – Worthless Check/Present Cashed Check

Senator Rabin was recognized to explain the bill and Senator Davis moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would provide that the criminal violation, remedies, and penalties for checks drawn on insufficient

funds also apply to checks that have been previously presented and honored and are presented again for payment. Ms. Carter was recognized to answer questions. Senator Cook moved for a favor report and the motion carried. A copy of the PCS and the summary is attached.
The meeting adjourned at 10:16 a.m.

H.B. 26 – Strengthen Laws/Vehicle Theft

Senator Daniel was recognized to explain the bill. Senator Davis moved to adopt the PCS for discussion and the motion carried. The PCS would increase the penalty for activities related to the dismantling and resale of stolen motor vehicle parts, in addition to amending the knowledge requirement for persons alleged to have participated in the activities. It also creates a system to verify that a motor vehicle being sold for scrap metal or parts is not stolen and provides that dealers submit required information into the National Motor Vehicle Title Information System. Senator Daniel offered a technical amendment which Hal Pell, an Attorney with the Research Division, explained. It regards the records of all car purchase transactions. Ed Turlington, representing metal recyclers, was recognized to speak in favor of the bill. Senator Daniel moved to adopt the amendment and the motion carried. Senator Tucker moved for a favorable report and the motion carried. A copy of the PCS, the summary and the amendment is attached.

The meeting adjourned at 10:42 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 13, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 26	Strengthen Laws/Vehicle Theft.	Representative T. Moore
HB 333	Sex Offender Residency/Regis. Amendments.	Representative Warren Representative Moffitt Representative Schaffer Representative Whitmire
HB 533	Detention of Mentally Ill in Facility.	Representative Jordan
HB 656	Forfeiture for Speeding to Elude Revisions.	Representative McNeill Representative Faircloth Representative Goodman Representative Dobson
HB 784	Worthless Check/Present Cashed Check.	Representative Stone Representative Dobson Representative Jordan Representative Carney
HB 891	Exploitation of Srs/Freeze Defendant's Assets.	Representative Glazier Representative McGrady Representative Insko Representative Baskerville

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, June 17, 2013

Senator Allran,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **26** **(CS#1)** Strengthen Laws/Vehicle Theft.
Draft Number: H26-PCS80383-RK-70
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **656** **(CS#1)** Forfeiture for Speeding to Elude Revisions.
Draft Number: H656-PCS30573-RK-71
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **784** **(CS#1)** Worthless Check/Present Cashed Check.
Draft Number: H784-PCS80384-RV-47
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator Warren Daniel will handle HB 26
Senator Shirley Randleman will handle HB 656
Senator Ronald Rabin will handle HB 784

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, June 13, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

HB **333** Sex Offender Residency/Registration Amendments.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **533** **(CS#1)** Detention of Mentally Ill in Facility.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **891** **(CS#1)** Exploitation of Srs/Freeze Defendants Assets.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator Austin Allran will handle HB 333
Senator Daniel Soucek will handle HB 533
Senator Stan Bingham will handle HB 891

HOUSE BILL 333
Second Edition Engrossed 4/15/13

Short Title:	Sex Offender Residency/Regis. Amendments.	(Public)
Sponsors:	Representatives Warren, Moffitt, Schaffer, and Whitmire (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee B.	

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY SEX OFFENDER STATUTES RELATING TO RESIDENCY AND REGISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.11 reads as rewritten:

"**§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.**

(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

(1) Fails to register as required by this ~~Article.~~Article, including failure to register with the sheriff in the county designated by the person, pursuant to G.S. 14-208.8, as their expected county of residence.

(2) Fails to notify the last registering sheriff of a change of address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(7) Fails to report in person to the sheriff's office as required by G.S. 14-208.7, 14-208.9, and 14-208.9A.

(8) Reports his or her intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff in the manner required by G.S. 14-208.9.

(9) Fails to notify the registering sheriff of out-of-county employment if temporary residence is established as required under G.S. 14-208.8A.

(10) Fails to inform the registering sheriff of any new or changes to existing online identifiers that the person uses or intends to use.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement officer who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(a2) A person arrested pursuant to subsection (a1) of this section shall be subject to the jurisdiction of the prosecutorial and judicial district that includes the sheriff's office in the county where the person failed to register, pursuant to this Article. If the arrest is made outside of the applicable prosecutorial district, the person shall be transferred to the custody of the sheriff of the county where the person failed to register and all further criminal and judicial proceedings shall be held in that county.

...."

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

HOUSE BILL 333:
Sex Offender Residency/Regis. Amendments

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 12, 2013
Introduced by:	Reps. Warren, Moffitt, Schaffer, Whitmire	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 333 would make clarifying changes to the law pertaining to registration requirements for persons subject to the Sex Offender and Public Protection Registration Program.***

CURRENT LAW: Under North Carolina's Sex Offender and Public Protection Registration Program, a person who is a State resident and who has a reportable conviction is required to maintain registration with the sheriff of the county where the person resides. For purposes of the Sex Offender Registration Program, a "reportable conviction" means a final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses. G.S. 14-208.6(5) specifies which violations are sexually violent offenses that require a person convicted of that offense to register as a sex offender.

BILL ANALYSIS: House Bill 333 would specify the following:

- A person who is released from a penal institution is guilty of a Class F felony for failure to register if the person fails to register with the sheriff in the county designated by the person as the place where he or she expects to reside upon release.
- A person arrested for failure to register would be subject to the jurisdiction of the prosecutorial and judicial district that includes the sheriff's office in the county where the person failed to register as required; if the arrest is made outside the county where the person failed to register, the person would be transferred to the custody of the sheriff of the county where the person failed to register and all proceedings would be held in that county.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 533
Committee Substitute Favorable 5/9/13
Third Edition Engrossed 5/15/13

Short Title: Detention of Mentally Ill in Facility. (Local)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COMPANY POLICE OFFICERS IN CERTAIN COUNTIES TO USE APPROPRIATE AND REASONABLE FORCE TO KEEP A RESPONDENT AT THE FACILITY WHERE THE RESPONDENT IS TO OBTAIN AN EXAMINATION BY A PHYSICIAN OR PSYCHOLOGIST PURSUANT TO COURT ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-251 reads as rewritten:

"**§ 122C-251. Transportation.**

(a) Except as provided in subsections (f) and (g), transportation of a respondent within a county under the involuntary commitment proceedings of this Article, including admission and discharge, shall be provided by the city or county. The city has the duty to provide transportation of a respondent who is a resident of the city or who is taken into custody in the city limits. The county has the duty to provide transportation for a respondent who resides in the county outside city limits or who is taken into custody outside of city limits. However, cities and counties may contract with each other to provide transportation.

(b) Except as provided in subsections (f) and (g) or in G.S. 122C-408(b), transportation between counties under the involuntary commitment proceedings of this Article for admission to a 24-hour facility shall be provided by the county where the respondent is taken into custody. Transportation between counties under the involuntary commitment proceedings of this Article for respondents held in 24-hour facilities who have requested a change of venue for the district court hearing shall be provided by the county where the petition for involuntary commitment was initiated. Transportation between counties under the involuntary commitment proceedings of this Article for discharge of a respondent from a 24-hour facility shall be provided by the county of residence of the respondent. However, a respondent being discharged from a facility may use his own transportation at his own expense.

(c) Transportation of a respondent may be by city-or county-owned vehicles or by private vehicle by contract with the city or county. To the extent feasible, law enforcement officers transporting respondents shall dress in plain clothes and shall travel in unmarked vehicles. Further, law enforcement officers, to the extent possible, shall advise respondents when taking them into custody that they are not under arrest and have not committed a crime, but are being transported to receive treatment and for their own safety and that of others.

(d) In providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent.

(e) In providing transportation required by this section, the law-enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. No law-enforcement officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of this Article.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a clerk, a magistrate, or a district court judge, where applicable, may authorize the family or immediate friends of the respondent, if they so request, to transport the respondent in accordance with the procedures of this Article. This authorization shall only be granted in cases where the danger to the public, the family or friends of the respondent, or the respondent himself is not substantial. The family or immediate friends of the respondent shall bear the costs of providing this transportation.

(g) The governing body of a city or county may adopt a plan for transportation of respondents in involuntary commitment proceedings in this Article. Law-enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall assure adequate safety and protections for both the public and the respondent. Law enforcement, other affected agencies, and the area authority shall participate in the planning. If any person other than a law-enforcement agency is designated by a city or county, the person so designated shall provide the transportation and follow the procedures in this Article. References in this Article to a law-enforcement officer apply to this person.

(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. The State (when providing transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable cost of transportation from the county of residence of the respondent. The county of residence of the respondent shall reimburse the State, another county, or a city the reasonable transportation costs incurred as authorized by this subsection. The county of residence of the respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a city, or a county. Provided that the county of residence provides the respondent or other individual liable for the respondent's support a reasonable notice and opportunity to object to the reimbursement, the county of residence of the respondent may recover that cost from:

(1) The respondent, if the respondent is not indigent;
(2) Any person or entity that is legally liable for the resident's support and maintenance provided there is sufficient property to pay the cost;
(3) Any person or entity that is contractually responsible for the cost; or
(4) Any person or entity that otherwise is liable under federal, State, or local law for the cost.

(i) If the law enforcement officer vacates the facility after finding, in collaboration with the facility, that the respondent is safe to be temporarily detained under the appropriate supervision provided by the facility, an employee commissioned under G.S. 74E-2(b) who is employed by a hospital certified under G.S. 74E-2(b) may use appropriate and reasonable force and means to (i) keep the respondent at the facility where the respondent is to be detained and (ii) if pursuant to a continuous and immediate pursuit, to return the respondent to the facility where the respondent is to be detained. This subsection applies when the respondent is being temporarily detained in accordance with G.S. 122C-261(d), 122C-263(a), and 122C-263(d)(2)."

SECTION 2. This act applies to Ashe, Cumberland, and Wilkes Counties only.

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

HOUSE BILL 533:
Detention of Mentally Ill in Facility

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 12, 2013
Introduced by:	Rep. Jordan	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 533 is a local bill that would grant authority to company police officers employed by a hospital to use appropriate and reasonable force to keep an individual in the facility where the individual is being temporarily detained to obtain an examination by a physician or psychologist pursuant to court order. The bill would apply to Ashe, Cumberland and Wilkes counties only.***

CURRENT LAW: G.S. 122C-261 provides that anyone who has knowledge of an individual who is mentally ill and is dangerous to himself or others, or who needs treatment in order to prevent further disability or deterioration that may result in a dangerousness, may seek a court order to take the individual (the respondent) into custody for examination by a physician or psychologist.

Under G.S. 122C-263, the law enforcement officer or the person designated by the court to take custody of the respondent must do so without unnecessary delay and transport the respondent to a facility for examination by a physician or psychologist. If the physician or psychologist is not readily available, the respondent may be temporarily detained at the facility.

BILL ANALYSIS: House Bill 533 would grant authority to law enforcement and company police officers employed by a hospital to use appropriate and reasonable force to keep the respondent in the facility where the respondent is being temporarily detained to obtain an examination by a physician or psychologist pursuant to court order. Hospital staff and law enforcement would be authorized to pursue a respondent who leaves the premises of the facility where he or she is being temporarily detained, and to return the respondent to the facility.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to Ashe, Cumberland, and Wilkes counties only.

O. Walker Reagan
Director

H533-SMRV-131 E3 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 656
Committee Substitute Favorable 5/1/13

Short Title: Forfeiture for Speeding to Elude Revisions. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAWS GOVERNING THE SEIZURE, FORFEITURE, AND SALE OF MOTOR VEHICLES USED BY DEFENDANTS IN FELONY CASES INVOLVING SPEEDING TO ELUDE ARREST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license ~~revocation.~~revocation; forfeiture for felony speeding to elude arrest.**

(a) Meaning of "Impaired Driving License Revocation". – The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2).

(a1) Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

(1) Impaired Driving Acknowledgment. – A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving, and:

1. That person's drivers license was revoked as a result of a prior impaired drivers license revocation; or

2. That person did not have a valid drivers license, and did not have liability insurance.

b. If the motor vehicle is again operated by this particular person, and the person is charged with an offense involving impaired driving, then the vehicle is subject to impoundment and forfeiture if (i) the offense occurs while that person's drivers license is revoked, or (ii) the offense occurs while the person has no valid drivers license, and has no liability ~~insurance; and~~insurance.

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular

person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Speeding to Elude Arrest Acknowledgment. – A written document acknowledging that:

a. The motor vehicle was operated by a person charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

b. If the motor vehicle is again operated by this particular person and the person is charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1), then the vehicle is subject to impoundment and forfeiture.

c. A lack of knowledge or consent to the operation will not be a defense in the future unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports upon discovery any unauthorized use to the appropriate law enforcement agency.

(1b) Fair Market Value. – The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent Owner. – A motor vehicle owner:

a. ~~Who~~ Who, if the offense resulting in seizure was an impaired driving offense, did not know and had no reason to know that (i) the defendant's drivers license was revoked, or (ii) that the defendant did not have a valid drivers license, and that the defendant had no liability insurance; or

b. ~~Who~~ Who, if the offense resulting in seizure was an impaired driving offense, knew that (i) the defendant's drivers license was revoked, or (ii) that the defendant had no valid drivers license, and that the defendant had no liability insurance, but the defendant drove the vehicle without the person's expressed or implied permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor ~~vehicle;~~vehicle, or who, if the offense resulting in seizure was a felony speeding to elude arrest offense, did not give the defendant express or implied permission to drive the vehicle, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle; or

c. Whose vehicle was reported stolen; or

d. Repealed by Session Laws 1999-406, s. 17.

e. Who is in the business of renting vehicles, and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure ~~and~~ and, if the offense resulting in seizure was an impaired driving offense, who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance Company. – Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders

and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. – A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor Vehicle Owner. – A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. – An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

(5) Repealed by Session Laws 1998-182, s. 2.

(6) Registered Owner. – A person in whose name a registration card for a motor vehicle is issued at the time of seizure.

(7) Repealed by Session Laws 1998-182, s. 2.

...

(b2) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; Felony Speeding to Elude Arrest. – A judge may determine whether the vehicle driven 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 felony speeding to elude arrest offense.

(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 felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

(c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying ~~offense involving impaired driving,~~ offense resulting in seizure, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle driver was charged to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall

be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) Forfeiture Hearing. – Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the underlying ~~offense involving impaired driving,~~offense resulting in seizure, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent owner as defined in this section, in which case the trial judge shall order the motor vehicle released to the innocent owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge shall:

(1) a. Authorize the sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or

b. Order the motor vehicle released to a lienholder pursuant to the provisions of subsection (f) of this section; and

(2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and

b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) Release of Vehicle to Innocent Motor Vehicle Owner. – At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

(4) The execution ~~of~~ of:

a. ~~an~~ An impaired driving acknowledgment as defined in subdivision (a1)(1) of this ~~section.~~section if the seizure was for an offense involving impaired driving; or

b. A speeding to elude arrest acknowledgment as defined in subdivision (a1)(1a) of this section if the seizure was for violation of G.S. 20-141.5(b) or (b1).

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an impaired driving acknowledgment or a speeding to elude arrest acknowledgment, as required by this section, and the same person was operating the motor vehicle ~~while that person's license was revoked~~ at the time of the current seizure unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

...."

SECTION 2. G.S. 20-28.3 reads as rewritten:

"**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked or without license and ~~insurance.~~insurance, and for felony speeding to elude arrest.**

(a) Motor Vehicles Subject to ~~Seizure.~~Seizure for Impaired Driving Offenses. – A motor vehicle that is driven by a person who is charged with an offense involving impaired driving is subject to seizure if:

(1) At the time of the violation, the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a); or

(2) At the time of the violation:

a. The person was driving without a valid drivers license, and

b. The driver was not covered by an automobile liability policy.

For the purposes of this subsection, a person who has a complete defense, pursuant to G.S. 20-35, to a charge of driving without a drivers license, shall be considered to have had a valid drivers license at the time of the violation.

(a1) Motor Vehicles Subject to Seizure for Felony Speeding to Elude Arrest. – A motor vehicle is subject to seizure if it is driven by a person who is charged with the offense of felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

(b) Duty of Officer. – If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the

officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable ~~source.~~sources. The seizing officer shall notify the ~~executive agency designated under subsection (b1) of this section~~ Division as soon as practical but no later than 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the ~~executive agency designated under subsection (b1) of this section.~~Division.

(b1) Written Notification of Impoundment. – Within 48 hours of receipt within regular business hours of the notice of seizure, ~~an executive agency designated by the Governor shall issue written notification of impoundment to the Division,~~ the Division shall issue written notification of impoundment to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. A notice of seizure received outside regular business hours shall be considered to have been received at the start of the next business day. The notification of impoundment shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged ~~while the defendant operator was committing an offense involving impaired driving~~ while the operator was committing an offense resulting in seizure or incident to the seizure, the ~~agency~~ Division shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(b2) Additional Notification to Lienholders. – In addition to providing written notification pursuant to subsection (b1) of this section, within eight hours of receipt within regular business hours of the notice of seizure, the ~~executive agency designated under subsection (b1) of this section~~ Division shall notify by facsimile any lienholder of record that has provided the ~~executive agency~~Division with a designated facsimile number for notification of impoundment. The facsimile notification of impoundment shall state that the vehicle has been seized, state the reason for the seizure, and notify the lienholder of the additional written notification that will be provided pursuant to subsection (b1) of this section. The ~~executive agency~~Division shall establish procedures to allow a lienholder to provide one designated facsimile number for notification of impoundment for any vehicle for which the lienholder is a lienholder of record and shall maintain a centralized database of the provided facsimile numbers. The lienholder must provide a facsimile number at which the ~~executive agency~~Division may give notification of impoundment at anytime.

...

(e) Release of Motor Vehicle Pending Trial. – A motor vehicle owner, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a nondefendant motor vehicle owner conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

(1) The motor vehicle has been seized for not less than 24 hours;

(2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.

(3) A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned

on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

(4) Execution of either:

a. ~~an~~ An impaired driving acknowledgment as described in ~~G.S. 20-28.2(a1);~~G.S. 20-28.2(a1)(1) if the seizure was for an offense involving impaired driving; or

b. A speeding to elude arrest acknowledgment as defined in G.S. 20-28.2(a1)(1a) if the seizure was for violation of G.S. 20-141.5(b) or (b1).

(5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized motor vehicle; and

(6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under ~~G.S. 20-28.3(e)~~G.S. 20-28.2(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall consider the petition and make a determination as soon as may be feasible. At any proceeding conducted pursuant to this subsection, the clerk is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. If the clerk determines that the petitioner is an innocent owner, the clerk shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). The clerk shall send a copy of the order authorizing or denying release of the vehicle to the district attorney and the attorney for the county board of education. An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. –

(1) ~~A~~ If the seizure was for an offense involving impaired driving, a defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the

petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing conducted pursuant to this ~~subsection,~~subdivision, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this ~~subsection~~ subdivision finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(2) If the seizure was for a felony speeding to elude arrest offense, a defendant motor vehicle owner may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle. The clerk shall release the motor vehicle to the defendant motor vehicle owner conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

a. The motor vehicle has been seized for not less than 24 hours;

b. A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

c. A bond posted to secure the release of this motor vehicle under this subdivision has not been previously ordered forfeited under G.S. 20-28.5.

In the event a defendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subdivision does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-28.2(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subdivision, the bond posted shall be ordered forfeited, and an order of seizure shall be issued by the court. Additionally, a defendant motor vehicle owner who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e3) Pretrial Release of Motor Vehicle to Lienholder. –

(1) A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve

a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

a. Default on the obligation secured by the motor vehicle has occurred;
b. As a consequence of default, the lienholder is entitled to possession of the motor vehicle;
c. The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;
d. The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, to the defendant or the motor vehicle owner; and
e. The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner.

(2) The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision ~~(1)(d)~~(1)d. above. A lienholder who refuses to sell, give, or transfer possession of a seized motor vehicle while the motor vehicle is subject to forfeiture, or a forfeited motor vehicle after the forfeiture hearing, to:

a. The defendant;
b. The motor vehicle owner who owned the motor vehicle immediately prior to seizure pending the forfeiture hearing, or to forfeiture after the forfeiture hearing; or
c. Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

...

(k) County Board of Education Right to Appear and Participate in Proceedings. – The attorney for the county board of education shall be given notice of all proceedings regarding offenses ~~involving impaired driving~~ related to a motor vehicle subject to ~~forfeiture.~~forfeiture under this section. However, the notice requirement under this subsection does not apply to proceedings conducted under G.S. 20-28.3(e1). The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure,

possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(l) Payment of Fees Upon Conviction. – If the driver of a motor vehicle seized pursuant to this section is convicted ~~of an offense involving impaired driving,~~ of the underlying offense resulting in the seizure of a motor vehicle pursuant to this section, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. If the underlying offense resulting in the seizure is felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1) and the defendant's conviction is for misdemeanor speeding to elude arrest pursuant to G.S. 20-141.5(a), whether or not the reduced charge is by plea agreement, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing and storage of the motor vehicle. In addition, a civil judgment for the costs under this section in favor of the party to whom the restitution is owed shall be docketed by the clerk of superior court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall become effective and be docketed when the defendant's conviction becomes final. If the defendant is placed on probation, the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due shall become effective and be docketed by the clerk when the defendant's probation is revoked or terminated.

(m) Trial Priority. – District court trials of ~~impaired driving~~ offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.
(2) The judge makes a finding of a "compelling reason" for the continuance.
(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal the conviction to superior court, any party who has not previously been heard on a petition for pretrial release under subsection (e1) or (e3) of this section or any party whose motor vehicle has not been the subject of a forfeiture hearing held pursuant to G.S. 20-28.2(d) may be heard on a petition for pretrial release pursuant to subsection (e1) or (e3) of this section. The provisions of subsection (e) of this section shall also apply to seized motor vehicles pending trial in superior court. Where a motor vehicle was released pursuant to subsection (e) of this section pending trial in district court, the release of the motor vehicle continues, and the terms and conditions of the original bond remain the same as those required for the initial release of the motor vehicle under subsection (e) of this section, pending the resolution of the underlying offense involving impaired driving in superior court.

...."

SECTION 3. G.S. 20-28.4(a) reads as rewritten:

"(a) Release Upon Conclusion of Trial. – If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of ~~an offense involving impaired drivingthe~~ underlying offense resulting in seizure due to dismissal or a finding of not guilty; or

(2) The judge at a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) ~~fails to find that the drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2;~~ finds that the criteria for forfeiture have not otherwise been met; and

(3) The vehicle has not previously been released to a lienholder pursuant to G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be released to the motor vehicle owner conditioned upon payment of towing and storage costs. The court shall not waive the payment of towing and storage costs. The court shall include in its order notice to the owner of the seized motor vehicle still being held, that within 30 days of the date of the court's order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs."

SECTION 4. G.S. 20-28.8 reads as rewritten:

"**§ 20-28.8. Reports to the Division.**

In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any other information that must be reported pursuant to this Chapter, the clerk of superior court shall report to the Division by electronic means the execution of an impaired driving acknowledgment as defined in G.S. 20-28.2(a1)(1), a speeding to elude arrest acknowledgment as defined in G.S. 20-28.2(a1)(1a), the entry of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information that has not previously been reported to the Division in the case: the name, address, and drivers license number of the defendant; the name, address, and drivers license number of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle identification number, state of registration, and vehicle registration plate number of the seized vehicle, if known."

SECTION 5. G.S. 20-54.1 reads as rewritten:

"**§ 20-54.1. Forfeiture of right of registration.**

(a) Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored, except in such cases to abide by the ignition interlock installation requirements of G.S. 20-17.8. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(a1) Upon receipt of notice of conviction of a felony speeding to elude arrest offense under G.S. 20-141.5(b) or (b1), the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(b) Upon receipt of a notice of conviction under subsection (a) or (a1) of this section, the Division shall revoke the registration of the motor vehicle seized, and the owner shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored. The Division shall not revoke the registration of the owner of the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall revoke the owner's registration only after the owner is given an opportunity for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration from the Division, the owner shall surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the notice."

SECTION 6. G.S. 20-141.5(g) through (j) is repealed.

SECTION 7. G.S. 20-141.5 is amended by adding a new subsection to read:

"(k) If a person is convicted of a violation of subsection (b) or (b1) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of felony speeding to elude arrest becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2, 20-28.3, 20-28.4, and 20-28.5."

SECTION 8. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 656:
Forfeiture for Speeding to Elude Revisions

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 12, 2013
Introduced by:	Reps. McNeill, Faircloth, Goodman, Dobson	**Prepared by:**	Hal Pell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 656 would revise the laws governing the seizure, forfeiture and sale of motor vehicles used by defendants in felony speeding to elude arrest cases. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.***

CURRENT LAW: In 2011, the General Assembly enacted a law that provided for the seizure, forfeiture, and sale of motor vehicles used in felony speeding to elude arrest offenses. Those provisions require the sheriff to receive the vehicles, and store the vehicles unless a bond is submitted. If the vehicle is released based upon the submission of a bond and approved by the sheriff, then the vehicle must be returned to the sheriff on the day of the trial of the person or persons accused.

- Generally, speeding to elude arrest is a Class 1 misdemeanor.
- The offense a Class H felony if (1) it is the proximate cause of a death, or (2) the offense has two or more statutory aggravating factors (e.g., speed in excess of 15 miles per hour over the limit; gross impairment; reckless driving; driving while revoked; passing a stopped school bus; and driving with a child under 12 years of age).
- If the offense has two or more aggravating factors, and also results in the death of a person, then the offense is a Class E felony.

BILL ANALYSIS: House Bill 656 would repeal the provisions enacted in 2011, and instead provide for the seizure, forfeiture, and sale of the motor vehicles using the same process and procedures used for the seizure, forfeiture, and sale of vehicles for impaired driving. The procedure includes the following:

- An acknowledgement by an innocent owner that if the person using the vehicle is charged again with felony speeding to elude arrest then the vehicle is subject to impoundment and forfeiture.
- A judicial determination on forfeiture made at:
  - A sentencing hearing for the underlying felony speeding to elude arrest offense.
  - A separate hearing after conviction of the defendant.
  - 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.
- Notification by the prosecutor to the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

Susan Sitze, Staff Attorney, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 656

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

H656-ARK-55 [v.1]

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

Date _____,2013

Senator Tucker

moves to amend the bill on page 1, line 19, by rewriting the line to read:

20-28.8, ~~and~~ 20-28.9, 20-54.1, and 20-141.5 the following terms mean:", and

On page 2, lines 39 through 41, by rewriting those lines to read:

"e. Who is ~~in the business of renting vehicles,~~(i) a rental car company as defined in G.S. 66-201(a), and the vehicle was driven by a person who is not listed as an authorized driver on the rental ~~contract;~~ agreement, as defined in G.S. 66-201; or (ii) is an authorized driver and if the offense resulting in seizure was an impaired driving offense, the rental car company has no actual knowledge of the revocation of the renter's drivers' license at the time the rental agreement is entered, or if the offense resulting in seizure was a felony speeding to elude arrest offense, the rental agreement expressly prohibits use of the vehicle while committing a felony; or".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 891
Committee Substitute Favorable 5/14/13

Short Title: Exploitation of Srs/Freeze Defendant's Assets. (Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DISTRICT ATTORNEY TO PETITION THE COURT TO FREEZE THE ASSETS OF A DEFENDANT CHARGED WITH FINANCIAL EXPLOITATION OF AN ELDER ADULT OR DISABLED ADULT AND TO ESTABLISH A PROCEDURE TO PETITION FOR THE FREEZING OR SEIZURE OF THE DEFENDANT'S ASSETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-112.2 is amended by adding a new subsection to read:

"(f) If a person is charged with a violation of this section that involves funds, assets, or property valued at more than five thousand dollars ($5,000), the district attorney may file a petition in the pending criminal proceeding before the court with jurisdiction over the pending charges to freeze the funds, assets, or property of the defendant in an amount up to one hundred fifty percent (150%) of the alleged value of funds, assets, or property in the defendant's pending criminal proceeding for purposes of restitution to the victim. The standard of proof required to freeze the defendant's funds, assets, or property shall be by clear and convincing evidence. The procedure for petitioning the court under this subsection shall be governed by G.S. 14-112.3."

SECTION 2. Article 19 of Chapter 14 of the General Statutes is amended by adding the following new section to read:

"**§ 14-112.3. Asset freeze or seizure; proceeding.**

(a) For purposes of this section, the term "assets" includes funds and property as well as other assets that may be involved in a violation of G.S. 14-112.2.

(b) Whenever it appears by clear and convincing evidence that any defendant is about to or intends to divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the district attorney may make an application to the court with jurisdiction over the pending charges to freeze or seize the assets of the defendant. Upon a showing by clear and convincing evidence in the hearing, the court shall issue an order to freeze or seize the assets of the defendant in the amount calculated pursuant to G.S. 14-112.2(f). The procedure for petitioning the court under this section shall be governed by G.S. 1A-1, Rule 65, except as otherwise provided in this section.

(c) At any time after service of the order to freeze or seize assets, the defendant or any person claiming an interest in the assets may file a motion to release the assets.

(d) In any proceeding to release assets, the burden of proof shall be by clear and convincing evidence and shall be on the State to show that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution. If the court finds that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for

purposes of restitution, the court shall order the assets frozen or held until further order of the court. The rules of evidence that apply to this proceeding are the rules that would apply in a proceeding pursuant to G.S. 1A-1, Rule 65.

(e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary dismissal by the State or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the assets.

(f) Any person holding any interest in the frozen or seized assets may commence a separate civil proceeding in the manner provided by law."

SECTION 3. This act becomes effective October 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 891:
Exploitation of Srs/Freeze Defendant's Assets

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 12, 2013
Introduced by:	Reps. Glazier, McGrady, Insko, Baskerville	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 891 would allow the district attorney to petition the court to freeze the assets of a defendant charged with exploitation of an elder or disabled adult, and would establish a procedure to petition the court for the freezing or seizure of assets.***

CURRENT LAW: Under G.S. 14-112.2 it is unlawful for a person who stands in a position of trust and confidence with, or has a business relationship with, an elder adult or disabled adult to knowingly, by deception or intimidation, obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the property, or to benefit someone other than the elder adult or disabled adult. A violation is punishable as follows:

- If the funds, assets, or property is $100,000 or more- Class F felony.
- If the funds, assets, or property is $20,000 or more but less than $100,000- Class G felony.
- If the funds, assets, or property is less than $20,000- Class H felony.

It is also unlawful for a person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent, to obtain or use, or conspire with another to obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the property, or benefit someone other than the elder adult or disabled adult. This provision does not apply to a person acting within his or her authority as the agent for the elder adult or disabled adult. A violation is punishable as follows:

- If the funds, assets, or property is $100,000 or more- Class G felony.
- If the funds, assets, or property is $20,000 or more but less than $100,000- Class H felony.
- If the funds, assets, or property is less than $20,000- Class I felony.

BILL ANALYSIS: For alleged violations of financial exploitation of an elder adult or disabled adult in an amount of more than $5,000, the bill would allow the district attorney to file a petition in the pending criminal proceeding to freeze the funds, assets, or property of the defendant in an amount up to 150% of the funds in the defendant's pending criminal proceeding. This is for the purpose of providing restitution to the victim. The standard of proof required to freeze the defendant's assets is clear and convincing evidence.

Section 2 of the bill provides a procedure for freezing or seizing the defendant's assets. If it appears by clear and convincing evidence that a defendant is about to or intends to divest himself or herself in a way that make the defendant insolvent for purposes of restitution, then the district attorney may make an application to the court with jurisdiction over the pending charges to freeze or seize assets of the defendant. The procedure for petitioning the court would be governed by G.S. 1A-1, Rule 65 (preliminary injunction; temporary restraining order), except as otherwise specified.

At any time after service of the order to freeze or seize assets, the defendant or any person claiming an interest in the assets would be permitted to file a motion to release the assets. In any proceeding to release assets, the State would have the burden to prove by clear and convincing evidence that that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution. If the State meets this burden, the court would then order the defendant's assets frozen or held.

The court would vacate the order to freeze or seize the defendant's assets if: (1) the prosecution of the charge is terminated by voluntary dismissal or (2) the defendant is acquitted. Any person holding an interest in the frozen or seized assets would be able to commence a separate civil proceeding as provided by law.

EFFECTIVE DATE: The bill would become effective October 1, 2013, and apply to offenses committed on or after that date.

Brad Krehely, counsel to House Judiciary B, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 784
Committee Substitute Favorable 5/6/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H784-CSRV-47 [v.1]
6/12/2013 2:18:40 PM

Short Title: Worthless Check/Present Cashed Check. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE REMEDIES AND PENALTIES FOR WORTHLESS CHECKS ALSO APPLY WHEN A CHECK THAT HAS BEEN PAID IN FULL IS PRESENTED AGAIN FOR PAYMENT AND TO PROVIDE THAT CHECKS REFUSED TO BE HONORED BY A BANK MAY BE SUBMITTED AS EVIDENCE IF THEY ARE STAMPED OR MARKED WITH ONE OF A NUMBER OF DIFFERENT LISTED TERMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-21.3(a) reads as rewritten:

"(a) Notwithstanding any criminal sanctions that may apply, a person, firm, or corporation who knowingly draws, makes, utters, or issues and delivers to another any check or draft drawn on any bank or depository that refuses to honor the same because the maker or drawer does not have sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon ~~presentation,~~ presentation or because the check has previously been presented and honored for the payment of money or its equivalent, and who fails to pay the same amount, any service charges imposed on the payee by a bank or depository for processing the dishonored check, and any processing fees imposed by the payee pursuant to G.S. 25-3-506 in cash to the payee within 30 days following written demand therefor, shall be liable to the payee (i) for the amount owing on the check, the service charges, and processing fees and (ii) for additional damages of three times the amount owing on the check, not to exceed five hundred dollars ($500.00) or to be less than one hundred dollars ($100.00). If the amount claimed in the first demand letter is not paid, the claim for the amount of the check, the service charges and processing fees, and the treble damages provided for in this subsection may be made by a subsequent letter of demand prior to filing an action. In an action under this section the court or jury may, however, waive all or part of the additional damages upon a finding that the defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

The initial written demand for the amount of the check, the service charges, and processing fees shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a1) of this section. The subsequent demand letter demanding the amount of the check, the service charges, the processing fees, and treble damages shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a2) of this section. If the payee chooses to send the demand letter set out in subsection (a2) of this section, then the payee may not file

an action to collect the amount of the check, the service charges, the processing fees, or treble damages until 30 days following the written demand set out in subsection (a2) of this section."

SECTION 2. G.S. 6-21.3(d) reads as rewritten:

"(d) The remedy provided for herein shall apply only if the check was drawn, made, uttered or issued with knowledge there were insufficient funds in the ~~account or~~account, that no credit existed with the bank or depository with which to pay the check or draft upon ~~presentation.~~presentation, or that the check was presented with the knowledge that the check had previously been presented and honored for the payment of money or its equivalent."

SECTION 3. G.S. 6-21.3 is amended by adding a new subsection to read:

"(e) A check or draft refused by a bank or depository, or the image of that check or draft, may be submitted as evidence for the remedy provided by this section if the bank or depository has returned it in the regular course of business stamped, marked or with an attachment indicating the reason for the dishonor with terms that include, but are not limited to, the following: "insufficient funds," "no account," "account closed," "NSF," "uncollected," "unable to locate," "stale dated," "postdated," "endorsement irregular," "signature irregular," "nonnegotiable," "altered," "unable to process," "wrong bank," "refer to maker," "duplicate presentment," "forgery," "noncompliant," or "UCD noncompliant.""

SECTION 4. G.S. 14-107 reads as rewritten:

"**§ 14-107. Worthless ~~checks.~~checks; multiple presentment of checks.**

(a) It is unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering the check or draft, that the maker or drawer of ~~it~~ it:

(1) ~~has~~ Has not sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon ~~presentation.~~presentation, or

(2) Has previously presented the check or draft for the payment of money or its equivalent.

(b) It is unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or ~~draft~~ draft:

(1) ~~has~~ Has not sufficient funds on deposit in, or credit with, the bank or depository with which to pay the check or draft upon ~~presentation.~~presentation, or

(2) Has previously presented the check or draft for the payment of money or its equivalent.

(c) The word "credit" as used in this section means an arrangement or understanding with the bank or depository for the payment of a check or draft.

(d) A violation of this section is a Class I felony if the amount of the check or draft is more than two thousand dollars ($2,000). If the amount of the check or draft is two thousand dollars ($2,000) or less, a violation of this section is a misdemeanor punishable as follows:

(1) Except as provided in subdivision (3) or (4) of this subsection, the person is guilty of a Class 2 misdemeanor. Provided, however, if the person has been convicted three times of violating this section, the person shall on the fourth and all subsequent convictions (i) be punished as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.

(2) Repealed by Session Laws 1999-408, s. 1.

(3) If the check or draft is drawn upon a nonexistent account, the person is guilty of a Class 1 misdemeanor.

(4) If the check or draft is drawn upon an account that has been closed by the drawer, or that the drawer knows to have been closed by the bank or depository, prior to time the check is drawn, the person is guilty of a Class 1 misdemeanor.

(e) In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any service charges imposed on the payee by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S. 25-3-506, and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

SECTION 5. G.S. 14-107.1(e) reads as rewritten:

"(e) If the bank or depository dishonoring a check or draft has returned it in the regular course of business stamped or marked or with an attachment indicating the reason for ~~dishonor ("insufficient funds," "no account," "account closed" or words of like meaning),~~ dishonor, the check or draft and any attachment may be introduced in evidence and constitute prima facie evidence of the facts of dishonor if the conditions of subdivisions (5) through (7) of subsection (b) or subdivisions (5) through (7) of subsection (c) have been met. The reason for dishonor may be indicated with terms that include, but are not limited to, the following: "insufficient funds," "no account," "account closed," "NSF," "uncollected," "unable to locate," "stale dated," "postdated," "endorsement irregular," "signature irregular," "nonnegotiable," "altered," "unable to process," "wrong bank," "refer to maker," "duplicate presentment," "forgery," "noncompliant," or "UCD noncompliant." The fact that the check or draft was returned dishonored may be received as evidence that the check passer had no credit with the bank or depository for payment of the check or draft."

SECTION 6. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 784:
Worthless Check/Present Cashed Check

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 12, 2013
Introduced by:	Reps. Stone, Dobson, Jordan, Carney	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to Second Edition H784-CSRV-47		Committee Counsel

SUMMARY: ***House Bill 784 would provide that the criminal violation, remedies, and penalties for checks drawn on insufficient funds also apply to checks that have been previously presented and honored and are presented again for payment. This PCS makes grammatical changes to Section 3 of the bill.***

CURRENT LAW: Under G.S. 14-107 it is unlawful to knowingly issue and deliver a check without having sufficient funds on deposit to pay the check. It is also a crime under G.S. 14-107 to aid or abet someone in presenting a check drawn on insufficient funds if the person aiding or abetting knew or had reasonable grounds to believe the maker or drawer had insufficient funds when presenting the check. A violation of G.S. 14-107 is a Class I felony if the check is more than $2,000. If the check is less than $2,000, the offense is a Class 1 misdemeanor if the check is drawn on a closed or nonexistent account or if the defendant has had 3 prior worthless check convictions; otherwise the offense is a Class 2 misdemeanor. The judge is authorized to order restitution to the victim, including the amount of the check and any bank charges or processing fees. G.S. 14-107.1 specifies what constitutes prima facie evidence in worthless check cases.

G.S. 6-21.3 provides a civil remedy applicable to a person who knowingly issues and delivers a check drawn on insufficient funds and fails to pay the amount of the check, along with any service charges imposed on the payee by the bank for processing the dishonored check and any processing fees imposed by the payee in accordance with applicable law, within 30 days after written demand. In a second letter of demand prior to filing an action, the payee has the right to demand (i) the amount owed on the check, the bank service charges and the payee's processing fees; as well as (ii) additional damages of three times the amount owed on the check, not to exceed $500.00 or be less than $100.00. If a civil action is filed by the payee, a judge or jury may waive all or part of the additional damages upon a finding that the failure to satisfy the dishonored check was due to economic hardship. The remedy in G.S. 6-21.3 applies only if the check was drawn with the knowledge that there were insufficient funds to honor the check. Affirmative defenses to actions under G.S. 6-21.3 are the following: (i) full satisfaction of the amount of the check or draft was made prior to commencement of the action; (ii) the bank erred in dishonoring the check or draft; or (iii) the acceptor of the check knew there were insufficient funds on deposit.

BILL ANALYSIS: House Bill 784 would provide that the criminal violation, remedies, and penalties for checks drawn on insufficient funds also apply to checks that have been previously presented and honored and are presented again for payment. It would also provide that checks refused and returned by a bank may be submitted as evidence if stamped or marked with reasons for the dishonor, including the following: "insufficient funds"; "no account", "account closed", "NSF", "uncollected", "unable to locate", "stale dated", "post-dated", "endorsement irregular", "signature irregular", "non-negotiable", "altered", "unable to process", "wrong bank", "refer to maker", "duplicate presentment", "forgery", "noncompliant", or "UCD noncompliant".

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

O. Walker Reagan
Director

H784-SMRV-129 CSRV-47 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 26
Committee Substitute Favorable 5/8/13
Third Edition Engrossed 5/13/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H26-CSRK-70 [v.4]
6/12/2013 4:50:12 PM

Short Title: Strengthen Laws/Vehicle Theft. (Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS PROTECTING AGAINST THE THEFT OF VEHICLES FOR DISASSEMBLY AND RESALE OF PARTS AND TO ASSIST LAW ENFORCEMENT IN THE INVESTIGATION OF ORGANIZED CRIMINAL ACTIVITY ASSOCIATED WITH THE THEFT OF VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-72.7(a) reads as rewritten:

"**§ 14-72.7. Chop shop activity.**

(a) A person is guilty of a ~~Class H~~ Class G 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 or has reasonable grounds to believe ~~to be~~ has been 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 either owns or has legal possession of the place, and knows or has reasonable grounds to believe 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 either knowing or having reasonable grounds to believe ~~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 or having reasonable grounds to believe that the person is engaging in that activity."

SECTION 2. G.S. 20-62.1 reads as rewritten:

"**§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.**

(a) Records for Scrap or Parts. – A secondary metals recycler, as defined in G.S. 66-420(8), and a salvage yard, as defined in G.S. 20-137.7(6), purchasing motor vehicles solely for the purposes of dismantling or wrecking such motor vehicles for the recovery of scrap metal or for the sale of parts only, ~~must~~shall comply with the ~~provision~~provisions of

~~G.S. 20-61,~~G.S. 20-61 and subsection (a1) of this section, provided, however, that a secondary metals recycler or salvage yard may purchase a motor vehicle without a certificate of title, if the motor vehicle is 10 model years old or older and the secondary metals recycler or salvage yard comply with the following requirements:

(1) Maintain a record of all purchase transactions of motor vehicles. The following information shall be maintained for transactions of motor vehicles:

a. The ~~name and address~~ name, address, and contact information of the secondary metals recycler or salvage yard.

b. The name, initials, or other identification of the individual entering the information.

c. The date of the transaction.

d. A description of the motor vehicle, including the ~~make~~year, make, and model to the extent practicable.

e. The vehicle identification number (VIN) of the vehicle.

f. The amount of consideration given for the motor vehicle.

g. A written statement signed by the seller or the seller's agent certifying that (i) the seller or the seller's agent has the lawful right to sell and dispose of the motor ~~vehicle.~~vehicle, (ii) the motor vehicle is at least 10 model years old, and (iii) the motor vehicle is not subject to any security interest or lien.

g1. A written statement that the motor vehicle will be scrapped or crushed for disposal or dismantled for parts only.

h. The ~~name and address~~name, address, and drivers license number of the person from whom the motor vehicle is being purchased.

i. A photocopy or electronic scan of a valid drivers license or identification card issued by the ~~Division of Motor Vehicles~~DMV of the seller of the motor vehicle, or seller's agent, to the secondary metals recycler or salvage yard, or in lieu thereof, any other identification card containing a photograph of the seller as issued by any state or federal agency of the United States: provided, that if the buyer has a copy of the seller's photo identification on file, the buyer may reference the identification that is on file, without making a separate photocopy for each transaction. If seller has no identification as described in this sub-subdivision, the secondary metals recycler or salvage yard shall not complete the transaction.

(1a) Verify with the DMV whether or not the motor vehicle has been reported stolen. The DMV shall develop a method to allow a person subject to this section to verify, at the time of the transaction through the use of the Internet, that the vehicle has not been reported stolen, and that also allows for the DMV's response to be printed and retained by the person making the request. One of the following shall apply following the DMV response:

a. If the Division of Motor Vehicles confirms that the motor vehicle has been reported stolen, the secondary metals recycler or salvage yard shall not complete the transaction and shall notify the DMV of the current location of the vehicle and the identifying information of the person attempting to transfer the vehicle.

b. If the Division of Motor Vehicles confirms that the motor vehicle has not been stolen, the secondary metals recycler or salvage yard may proceed with the transaction and shall not be held criminally or civilly liable if the motor vehicle later turns out to be a stolen vehicle,

unless the secondary metals recycler had knowledge that the motor vehicle was a stolen vehicle.

(2) Maintain the information required under subdivision (1) of this ~~subsection~~ subsection, and the record confirming that the vehicle was not stolen, required under subdivision (1a) of this subsection, for not less than two years from the date of the purchase of the motor vehicle.

(a1) Reporting requirement. – Within 72 hours of each day's close of business, a secondary metals recycler or salvage yard purchasing a motor vehicle under this section shall submit to the National Motor Vehicle Title Information System (NMVTIS) such information contained in subdivision (1) of subsection (a) of this section, along with any other information or statement pertaining to the intended disposition of the motor vehicle, as may be required. The information shall be in a format that will satisfy the requirement for reporting information in accordance with rules adopted by the United States Department of Justice in 28 C.F.R. § 25.56. A secondary metals recycler or salvage yard may comply with this subsection by reporting the information required by this subsection to a third-party consolidator as long as the third-party consolidator reports the information to the NMVTIS in compliance with the provisions of this subsection.

(b) Inspection of Motor Vehicles and Records. – At any time it appears a secondary metals recycler, salvage yard, or any other person involved in secondary metals operations is open for business, a law enforcement officer shall have the right to inspect the following:

(1) Any and all motor vehicles in the possession of the secondary metals recycler, the salvage yard, or any other person involved in secondary metals operations.

(2) Any records required to be maintained under subsection (a) of this section.

(b1) Availability of information. – The information obtained by the Division of Motor Vehicles pursuant to this section shall be made available to law enforcement agencies only. The information submitted pursuant to this section is confidential and shall not be considered a public record as that term is defined in G.S. 132-1.

(c) Violations. – Any person who knowingly and willfully violates any of the provisions of this section, or any person who falsifies the statement required under subsection (a)(1)g. of this section, shall be guilty of a ~~Class 1 misdemeanor for a first offense. A second or subsequent violation of this section is a~~ Class I ~~felony.~~felony and shall pay a minimum fine of one thousand dollars ($1,000). The court may order a defendant seller under this subsection to make restitution to the secondary metals recycler or salvage yard or lien holder for any damage or loss caused by the defendant seller arising out of an offense committed by the defendant seller.

...."

SECTION 3. Section 1 of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date. Section 2 of this act becomes effective for reports and transactions occurring on or after December 1, 2013, 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 26:
Strengthen Laws/Vehicle Theft

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 12, 2013
Introduced by:	Rep. T. Moore	**Prepared by:**	Hal Pell
Analysis of:	PCS to Third Edition H26-CSRK-70		Committee Counsel

SUMMARY: ***This act increases the penalty for activities related to the dismantling and resale of parts from a stolen motor vehicle, in addition to amending the knowledge requirement for persons alleged to have participated in the activities; creates a verification system to verify that a motor vehicle being sold for scrap metal or parts is not a stolen vehicle; and provides that dealers submit required information into the National Motor Vehicle Title Information System. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.***

CURRENT LAW: The State must prove that a person knew (subjective belief) that a vehicle was stolen in order to obtain a conviction for dismantling a stolen vehicle for parts. Under G.S. 14-71, receiving stolen goods, the law provides that a person either "know or have reasonable grounds to believe" that the goods are stolen goods.

BILL ANALYSIS: This act;

- Amends the "knowledge" element for criminal activities relating to stolen motor vehicles from "knowing" to "knowing or has reasonable grounds to believe" that the motor vehicle was stolen.
- Increases, from a Class H felony to a Class G felony, each of the listed activities relating to stolen motor vehicles.
- Creates a system, approved by the Department of Motor Vehicles (DMV), by which a purchaser of a motor vehicle for scrap metal or parts can check through use of the internet at the time of the transaction ("real-time") whether the vehicle has been reported stolen, and receive a certificate from the Department if the vehicle has not been reported stolen. If the DMV notifies the person making the request that the vehicle has been reported stolen, then the person is required to provide the vehicle location information, and the identifying information, to the DMV.
- Requires each person subject to the law to report, within 72 hours of each day's close of business, information to the National Motor Vehicle Title Information System (NMVTIS). The information can be provided to a third party, as long as the third party reports the information into the NMVTIS.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 26

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

H26-ARK-54 [v.1]

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

Date _____,2013

Senator _____

moves to amend the bill on page 2, line 4, by rewriting the line to read:

"(1) Maintain a record on a form, or in a format, as approved by the Division of Motor Vehicles (DMV) of all purchase transactions of motor vehicles. The".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 6-13 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Spencer Zachary	Taylorsville	Allran
2. William Cheung	Taylorsville	Allran
3. Amanda Pruthi	Durham	Kinnaird
4. Mackenzie Morgan	Charlotte	Tarte
5. Jelisa Murray	Raleigh	Blue
6. Amanda Davis	Red Oak	Bryant
7. Tristan Gordon	Monroe	Tucker
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 06/13/13 ROOM: 1124

1. HAL ROACH
2. ROBERT YOUNG
3. ASHLEY MICKENS
4. BILLY FRITSCHER

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 13, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kay Emanuel	School of Government
Chris Sigmann	Intern - Sen. Kinnaird
Allison Waller	Nelson Mullins
[illegible]	SOS
Erwin Robinson	NCRMA
Hope Chadwick	Jordan LA
Will Grantham	MLWC
Brady Allen	Allen Law Offices, PLLC
Britton Allen	//
Joel Maynard	GPM & NSOC
Erica Nelson	NCHA

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 13, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris McClure	Brooks Pierce
Ed Turlington	" "
Steve Watkins	DMV License & Theft
Keith King	NCDMV License & Theft Bureau
Ellen Hanna	
Cory Dunn	DRNC
Gregg Stahl	NC Sheriffs' Assoc
Chris Agner	DOJ
Johanna Reese	NCACC

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 13, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kelli Luna	Duke Energy

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 13, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Baum	Troutman Sanders
Alex Miller	KL6
Colleen Kochanek	KL6

Senate Committee on Judiciary II
Tuesday, June 18, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 137	Reward Amt/Arrest of Fugitive From Justice.	Rep. Stevens Rep. Faircloth Rep. McNeill Rep. Burr
HB 450	Criminal Contempt/Bail Procedure.	Rep. Starnes
HB 477	Allison's Law/Use of GPS Tracking Device/DVPO.	Rep. Lambeth Rep. S. Ross Rep. Schaffer
HB 510	Foster Care Children's Bill of Rights.	Rep. Cotham Rep. Hardister Rep. Avila Rep. Jackson

Adjournment

Senate Judiciary II Committee
Tuesday, June 18, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Tuesday, June 18, 2013 in room 1124 of the Legislative Building. Parker Lee of Fuquay Varina, David Andrews of Morrisville, Jackson Valentine of Nashville, Katilyn Hinson of Youngsville, Divya Juneja of Cary, Alison Berger of Raleigh, and Kaitlynn Divine of Waxhaw served as pages. Senator Allran presided as chair.

H.B. 510 – Foster Care Children's Bill of Rights

This bill was removed from the agenda.

H.B. 137 – Reward Amt/Arrest of Fugitive From Justice

Representative Stevens was recognized to explain the bill. It would increase the maximum reward amount from $10,000 to $100,000 that the Governor may offer for the apprehension of a fugitive or for information leading to the arrest and conviction of a person suspected of a crime. Senator Cook moved for a favorable report and the motion carried. A copy of the bill, the summary, and the incarceration note is attached.

H.B. 450 – Criminal Contempt/Bail Procedure

Representative Stevens was explained the bill, which would provide procedures for bail when a person has been found in criminal contempt of court and confinement has been imposed. Hal Pell, an Attorney with the Research Division, was recognized to answer questions. Senator Cook moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 477 – Allison's Law/Use of GPS Tracking Device/DVPO

This bill was calendared for discussion only. Representative Lambeth was recognized to explain the bill. The bill would authorize a court to include in a domestic violence protective order that a defendant wear a GPS tracking device and prohibit the defendant from being at a prohibited location. It would also require the NC Department of Public Safety, in consultation with the NC Sheriffs' Association and the Coalition Against Domestic Violence, to report on implementation and cost impact. Doug Holbrook, the Legislative Liaison from the Department of Public Safety, was recognized to answer questions about "exclusion zones". Mr. Pell was recognized to address the Administrative Office of the Courts' concerns about funding, levels of offenses and individual's costs. A copy of the bill and the summary is attached.

The meeting adjourned at 10:52 a.m.

Austin Allran

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 20, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 92	GSC Technical Corrections 2013.	Representative Blust
HB 399	Amend Laws Pertaining to DHHS.-AB	Representative Burr Representative Hollo Representative Avila
HB 510	Foster Care Children's Bill of Rights.	Representative Cotham Representative Hardister Representative Avila
HB 615	Remove Revocation for DWLR.	Representative Jackson Representative Ramsey Representative Baskerville Representative Turner

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 18, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 137	Reward Amt/Arrest of Fugitive From Justice.	Representative Stevens Representative Faircloth Representative McNeill Representative Burr
HB 450	Criminal Contempt/Bail Procedure.	Representative Starnes
HB 477	Allison's Law/Use of GPS Tracking Device/DVPO.	Representative Lambeth Representative S. Ross Representative Schaffer
HB 510	Foster Care Children's Bill of Rights.	Representative Cotham Representative Hardister Representative Avila Representative Jackson

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, June 18, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

HB **137** Reward Amt/Arrest of Fugitive From Justice.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

HB **450** **(CS#1)** Criminal Contempt/Bail Procedure.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Shirley Randleman will handle HB 137
Senator Warren Daniel will handle HB 450

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 1

HOUSE BILL 137

Short Title:	Reward Amt/Arrest of Fugitive From Justice.	(Public)
Sponsors:	Representatives Stevens, Faircloth, McNeill, and Burr (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee C, if favorable, Appropriations.	

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE REWARD AMOUNT THAT THE GOVERNOR MAY OFFER FOR THE APPREHENSION OF A FUGITIVE FROM JUSTICE OR FOR INFORMATION LEADING TO THE ARREST AND CONVICTION OF A FUGITIVE FROM JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-53 reads as rewritten:

"**§ 15-53. Governor may employ agents, and offer rewards.**

The Governor, on information made to ~~him~~ the Governor of any person, whether the name of such person be known or unknown, having committed a felony or other infamous crime within the State, and of having fled out of the jurisdiction thereof, or who conceals himself or herself within the State to avoid arrest, or who, having been convicted, has escaped and cannot otherwise be apprehended, may either employ a special agent, with a sufficient escort, to pursue and apprehend such fugitive, or issue ~~his~~ a proclamation, and therein offer a reward, not exceeding ~~ten thousand dollars ($10,000)~~,one hundred thousand dollars ($100,000), according to the nature of the case, as in ~~his~~ the Governor's opinion may be sufficient for the purpose, to be paid to ~~him~~ anyone who shall apprehend and deliver the fugitive to such person and at such place as in the proclamation shall be directed."

SECTION 2. G.S. 15-53.1 reads as rewritten:

"**§ 15-53.1. Governor may offer rewards for information leading to arrest and conviction.**

When it shall appear to the Governor, upon satisfactory information furnished to ~~him,~~ the Governor, that a felony or other infamous crime has been committed within the State, whether the name or names of the person or persons suspected of committing the said crime be known or unknown, the Governor may issue ~~his~~ a proclamation and therein offer an award [reward] not exceeding ~~ten thousand dollars ($10,000)~~,one hundred thousand dollars ($100,000), according to the nature of the case as, in ~~his~~ the Governor's opinion, may be sufficient for the purpose, to be paid to ~~him~~ anyone who shall provide information leading to the arrest and conviction of such person or persons. The proclamation shall be upon such terms as the Governor may deem proper, but it shall identify the felony or felonies and the authority to whom the information is to be delivered and shall state such other terms as the Governor may require under which the reward is payable."

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

HOUSE BILL 137:
Reward Amt/Arrest of Fugitive From Justice

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 14, 2013
Introduced by:	Reps. Stevens, Faircloth, McNeill, Burr	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***This act increases the maximum amount from ten thousand dollars ($10,000) to one hundred thousand dollars ($100,000) that the Governor may offer for the apprehension of a fugitive, or for information leading to the arrest and conviction of a person suspected of a crime—whether the name or names are known or unknown. This act is effective when it becomes law.***

CURRENT LAW:

- The Governor may employ a special agent to apprehend a person who has committed a felony or other "infamous" crime, or has fled to avoid arrest for such a crime, or offer a reward of up to ten thousand dollars ($10,000) to anyone who apprehends and delivers the fugitive to the agent. The phrase "infamous crime" appears in the Fifth Amendment to the United States Constitution, and has been interpreted by the United States Supreme Court as any crime punishable by more than one year in prison.
- The Governor may offer a reward of up to ten thousand dollars to anyone who provides information leading to the arrest or conviction of a person suspected of committing a felony or other infamous crime.

BILL ANALYSIS: The act increase the amount the Governor may award for either the apprehension of a fugitive, or for information leading to the arrest and conviction of a fugitive, from ten thousand dollars ($10,000) to one hundred thousand dollars ($100,000).

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

O. Walker Reagan
Director

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: House Bill 137 (First Edition)

SHORT TITLE: Reward Amt/Arrest of Fugitive From Justice.

SPONSOR(S): Representatives Burr, Stevens, Faircloth, and McNeill

FISCAL IMPACT

($ in millions)

☐ Yes ☐ No ☑ No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	$0.0	$0.0	$0.0	$0.0	$0.0
Local Impact					
Revenues:					
Expenditures:					
NET LOCAL IMPACT	$0.0	$0.0	$0.0	$0.0	$0.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Office of the Governor, Office of State Budget and Management, and Contingency and Emergency Fund

EFFECTIVE DATE When bill becomes law.

TECHNICAL CONSIDERATIONS:
None

BILL SUMMARY:

Amends GS 15-53 and 15-53.1 by increasing the reward that the Governor may pay to individuals who apprehend or provide information that lead authorities to the arrest and conviction of criminals. The amount is increased from a maximum payment of $10,000 to a maximum payment of $100,000.

ASSUMPTIONS AND METHODOLOGY:

This increases the amount of funds that the Governor may pay as part of a rewards proclamation. The source of funding for these rewards is the Contingency and Emergency Fund established in GS 143C 4-4. According to GS 143C 4-4, in order for funds to be used from this account, the State Budget Director must approve the expenditure and prepare a request for approval by the Council of State.

There is no estimate available for the cap of reward amount because it is subject to the number and total of rewards that the Governor recommends for payment. In FY 2011-12, the amount paid out in rewards was $10,000 and currently in FY 2012-13, the amount authorized for payment is $5,000.

SOURCES OF DATA:
Office of State Budget and Management and Fiscal Research Division

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lisa Hollowell

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 9, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 450
Committee Substitute Favorable 5/15/13

Short Title: Criminal Contempt/Bail Procedure. (Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR BAIL PROCEDURE WHEN CONFINEMENT IS IMPOSED AS PUNISHMENT FOR CRIMINAL CONTEMPT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 5A-17 reads as rewritten:

"**§ 5A-17. ~~Appeals.~~Appeals; bail proceedings.**

(a) A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions, except appeal from a finding of contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge.

(b) Upon appeal in a case where the judicial official imposes confinement, a bail hearing shall be held within a reasonable time period after imposition of the confinement. The judicial official holding the bail hearing shall be:

(1) A district court judge if the confinement is imposed by a clerk or magistrate.

(2) A superior court judge if the confinement is imposed by a district court judge.

(3) A superior court judge other than the superior court judge that imposed the confinement.

(c) A person found in contempt and who has given notice of appeal may be retained in custody not more than 24 hours from the time of imposition of confinement without a bail determination being made by a judicial official as designated under subdivisions (1) through (3) of subsection (b) of this section. If a designated judicial official has not acted within 24 hours of the imposition of confinement, any judicial official shall act under the provisions of subsection (b) of this section and hold the bail hearing."

SECTION 2. This act becomes effective December 1, 2013, and applies to confinement imposed on or after that date.

HOUSE BILL 450:
Criminal Contempt/Bail Procedure

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 14, 2013
Introduced by:	Rep. Starnes	**Prepared by:**	Hal Pell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***This act provides procedures for bail when a person has been found in criminal contempt of court and confinement has been imposed. This act becomes effective December 1, 2013, and applies to findings of criminal contempt entered on or after that date.***

CURRENT LAW:

- A judge may choose to act summarily and impose measures in response to direct criminal contempt. The judge must give the person notice and a summary opportunity to respond. The judicial official must finds facts (beyond a reasonable doubt) supporting a summary imposition of measures in response to contempt.
- If the judicial official decides not to act summarily, then a plenary proceeding is conducted before a district court judge (unless a superior court judge is the judicial official directing the plenary hearing). The person is directed to appear and show cause why the person should not be held in contempt of court. If the criminal contempt is based on acts before a judge which so involve the judge that the judge's objectivity may be reasonably questioned, then the hearing must be before another judge.
- Appeal from a finding of contempt by a judicial official (other than a superior court judge) is by hearing de novo before a superior court judge.

BILL ANALYSIS: The act:

- Provides that if confinement is adjudged as part of the contempt order, upon appeal there would be a bail hearing by a judicial official other than the judicial official who found the person in contempt, and as designated in the act.
- If a judicial official as designated in the act has not held a bail hearing within 24 hours from the imposition of confinement, then any judicial official shall act and hold the bail hearing.

EFFECTIVE DATE: This act becomes effective December 1, 2013, and applies to confinement imposed on or after that date.

O. Walker Reagan
Director

H450-SMRK-113 E2 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 477
Committee Substitute Favorable 5/9/13
Third Edition Engrossed 5/13/13

Short Title: Allison's Law/Use of GPS Tracking Device/DVPO. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT ALLOWING A COURT TO CONSIDER AS A TYPE OF RELIEF IN GRANTING A DOMESTIC VIOLENCE PROTECTIVE ORDER THE USE OF A GPS TRACKING DEVICE ON A PERSON WHO HAS COMMITTED ACTS OF DOMESTIC VIOLENCE AND REQUIRING THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY TO REPORT ON IMPLEMENTATION AND COST IMPACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) is amended by adding the following new subdivision to read:

"(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:

...

(9a) Order a defendant the court finds has committed an act of domestic violence to be subject to electronic monitoring by means of a Global Positioning System (GPS) tracking device or other similar device that sends a signal indicating the defendant's location to both the aggrieved party and the local law enforcement agency when the defendant is at any prohibited location. The GPS tracking device or other similar device shall be worn for the period fixed in the order. The defendant subject to electronic monitoring pursuant to this subdivision shall be responsible for paying any costs associated with use of the device.

...."

SECTION 2. The North Carolina Department of Public Safety, in consultation with the North Carolina Sheriffs' Association and the North Carolina Coalition Against Domestic Violence, shall report to the Joint Legislative Oversight Committee on Justice and Public Safety by April 1, 2014, with recommendations regarding implementation and any cost impact of allowing a court to order electronic monitoring of a defendant who has committed an act of domestic violence.

SECTION 3. Section 1 of this act becomes effective July 1, 2014, and applies to protective orders granted on or after that date. Section 2 of this act is effective when it becomes law. The remainder of this act is effective when it becomes law.

HOUSE BILL 477: Allison's Law/Use of GPS Tracking Device/DVPO

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 13, 2013
Introduced by:	Reps. Lambeth, S. Ross, Schaffer	**Prepared by:**	Hal Pell
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 477 would authorize a court to include in a domestic violence protective order that a defendant wear a Global Position System (GPS) tracking device, and prohibit the defendant from being at a prohibited location. It also requires the North Carolina Department of Public Safety, in consultation with the North Carolina Sheriffs' Association and the Coalition Against Domestic Violence, to report on implementation and cost impact.***

CURRENT LAW: If the court 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 the following types of relief:

- Direct a party to refrain from such acts.
- Grant to a party possession of the residence and exclude the other party from the residence.
- Require a party to provide a spouse and his or her children suitable alternate housing.
- Award temporary custody of minor children and establish temporary visitation rights.
- Order the eviction of a party from the residence and assistance to the victim in returning to it.
- Order either party to make payments for the support of a minor child.
- Order either party to make payments for the support of a spouse.
- Provide for possession of personal property of the parties, including the care or custody of a pet by either party or minor child residing in the household.
- Order a party to refrain from doing any or all of the following:

  Threatening, abusing, or following the other party.

  Harassing the other party.

  Cruelly treating/abusing an animal held by either party or minor child in the household.

  Otherwise interfering with the other party.
- Award attorney's fees to either party.
- Prohibit a party from purchasing a firearm for a time fixed in the order.
- Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program that is approved by the Domestic Violence Commission.
- Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

Protective orders shall be 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 two years. A copy of any order is issued to each party and to the police department of the city of the victim's residence (or the sheriff or county if the city has no police department). A copy of the order is also delivered to the principal or the principal's designee if the defendant is ordered to stay away from the child's school.

BILL ANALYSIS: House Bill 477 would add the following to the types of relief that a protective order may include:

- Order a defendant that has committed an act of domestic violence to be subject to electronic monitoring by means of a Global Positioning System (GPS) tracking device or other similar device that sends a signal indicating the defendant's location to the aggrieved party and the local law enforcement agency when the defendant is near or at any prohibited location. The GPS tracking device must be worn for the period fixed in the order. The defendant subject to electronic monitoring is responsible for paying any costs associated with use of the device.

The act would require the North Carolina Department of Public Safety, in consultation with the North Carolina Sheriffs' Association and the Coalition Against Domestic Violence, to report to the Joint Legislative Oversight Committee on Justice and Public Safety by April 1, 2014, with recommendations regarding implementation and any cost impact of allowing a court to order electronic monitoring of a defendant who has committed an act of domestic violence.

EFFECTIVE DATE: Section 1 becomes effective July 1, 2014, and applies to protective orders granted on or after that date. Section 2 is effective when it becomes law. The remainder of the act is effective when it becomes law.

Brad Krehely, Staff Attorney, substantially contributed to this summary.

Allran & Daniel

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 6-18 TIME: 10 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Parker Lee	Fuquay Varina	Sanderson
2. David Andrews	Morrisville	Stein
3. Jackson Valentine	Nashville	Newton
4. Katilyn Hinson	Youngsville	barefoot
5. Divya Juneja	Cary	clodfelter
6. Alison Berger	Raleigh	Stein
7. Kaitlynn Divine	Waxhaw	Tucker
8.		
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 06/18/13 ROOM: 1124

1. BILLY FRITSCHER
2. ROBERT YOUNG
3. ASHLEY MICKENS
4. JUSTIN OWENS

VISITOR REGISTRATION SHEET

Senate J II Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Justin Mann	UNC School of Law
Erin Wynia	NCLM
Kay Paksay	NASW NC
Debbie Hughes	KLG
Stephanie Shaker	Nelson Mullins
Kirstin Gardner	Nelson Mullins
Keith Richardson	City of Charlotte
Joel Hammonds	GPM & Assoc
Joan Akalaonu	GAL intern
Alex Miller	KLG
Mildred Spearman	NCAOC
Will Dickey	UNC School of Law
Rebecca Funk	NCACC
Mark Black	NCBAA

NAME FIRM

VISITOR REGISTRATION SHEET

Senate J II Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sachi Pathak	Shadowing Sen. Kinnaird
Chris Sigmann	Intern - Sen. Kinnaird
Sarah Ovaska	NC Policy Watch
Joe. Turrentine	UNC-Law School
JAnine Zanin	UNC LAW School
Amy McCrea	UNC Law School
Elaine Hartman	UNC Law School
Jeremy McComic	UNC Law School
Quinn West Godwin	UNC School of Law
Erin Locker	UNC
Amanda Huegerich	UNC School of Law

VISITOR REGISTRATION SHEET

Senate J II Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Adam Berkland	Intern - Nelson Mullins
Chris Kellum	Nelson Mullins
Lori Ann Hamms	LHHA
Erica Nelson	NCHA

Senate Committee on Judiciary II
Thursday, June 20, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 92	GSC Technical Corrections 2013.	Representative Blust
HB 399	Amend Laws Pertaining to DHHS.-AB	Representative Burr Representative Hollo Representative Avila
HB 510	Foster Care Children's Bill of Rights.	Representative Cotham Representative Hardister Representative Avila Representative Jackson
HB 615	Remove Revocation for DWLR.	Representative Ramsey Representative Baskerville Representative Turner

Adjournment

Senate Judiciary II Committee
Thursday, June 20, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, June 20, 2013 in room 1124 of the Legislative Building. Senator Daniel presided as chair.

H.B. 92 – GSC Technical Correction 2013

Representative Blust was recognized to explain the bill. Senator Clark moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS contains technical changes recommended by the General Statutes Commission. Bly Hall, an Attorney with the Research Division, was recognized to explain the PCS. Senator Bingham moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

H.B. 399 – Amend Laws Pertaining to DHHS - AB

Representative Burr was recognized to explain the bill, which would make changes to statutes pertaining to child abuse, neglect and dependency, Medicaid, and public health, as requested by the Department of Health and Human Services (DHHS). Brenda Carter, an Attorney with the Research Division, was recognized to explain the bill, section by section, and answer questions. Senator Daniel was recognized to offer an amendment which would remove duplicate sections. Senator Randleman moved to adopt the amendment and the motion carried. Senator Randleman was recognized to offer an amendment which makes a technical change. Senator Bingham moved to adopt the amendment and the motion carried. Adam Sholar, the Director of Intergovernmental Relations – DHHS, was recognized to answer questions. Senator Bingham moved for a favorable report with the amendments rolled into the bill as a new PCS and the motion carried. A copy of the bill, the summary, and the amendments is attached.

H.B. 510 – Foster Care Children's Bill of Rights

Representative Hardister was recognized to explain the bill and Senator Bingham moved to adopt the PCS for discussion. The motion carried. The bill would declare as policy specific various interests to be served in the provision of foster care. The PCS also makes it clear that the provisions of the bill would not create a cause of action against the State or the DHHS. Kevin Kelley, Section Chief of the Division of Social Services – Child Welfare, was recognized to answer questions. Senator Bryant moved for a favorable report as to the PCS and the motion carried. A copy of the PCS and the summary is attached.

H.B. 615 – Remove Revocation of DWLR

Representative Ramsey was recognized to explain the bill which would limit the applicability of the requirement for an additional period of revocation upon a conviction of driving while license revoked, and would make additional conforming changes. Representative Bryant moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 10:49 a.m.

Senator Warren Daniel
Presiding Chair

DeAnne Mangum
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

CORRECTED REPORT #1

Monday, June 24, 2013

Senator Daniel,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **92** **(CS#1)** GSC Technical Corrections 2013.

Draft Number:	H92-PCS70464-MN-6
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

HB **510** **(CS#1)** Foster Care Childrens Bill of Rights.

Draft Number:	H510-PCS80391-LU-8
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Fletcher Hartsell will handle HB 92
Senator Tamara Barringer will handle HB 510

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, June 24, 2013

Senator Daniel,
submits the following with recommendations as to passage:

FAVORABLE

HB **615** **(CS#1)** Remove Revocation for DWLR.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **92** **(CS#1)** GSC Technical Corrections 2013.
Draft Number: H92-PCS70464-MN-6
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

HB **510** **(CS#1)** Foster Care Childrens Bill of Rights.
Draft Number: H510-PCS80391-LU-8
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

HB **399** **(SCS#1)** Amend Laws Pertaining to DHHS.-AB
Draft Number: H399-PCS80390-RV-51
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Senator Warren Daniel will handle HB 615
Senator Fletcher Hartsell will handle HB 92
Senator Tamara Barringer will handle HB 510
Senator Louis Pate will handle HB 399

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 92*
Committee Substitute Favorable 5/8/13
Third Edition Engrossed 5/13/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H92-CSMN-6 [v.6]
6/19/2013 7:47:13 PM

Short Title: GSC Technical Corrections 2013. (Public)

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO MAKE A TECHNICAL CORRECTION TO THE STATUTE PROVIDING THAT CAR RENTAL AGENCIES ARE INNOCENT OWNERS IF A RENTED VEHICLE BECOMES SUBJECT TO SEIZURE UNDER CHAPTER 20 OF THE GENERAL STATUTES, AND TO ALLOW THE NORTH CAROLINA BOARD OF ARCHITECTURE TO ACQUIRE AND DEAL WITH REAL PROPERTY.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

SECTION 1. The title of Article 9 of Chapter 7A of the General Statutes reads as rewritten:

"Article 9.
District Attorneys and ~~Judicial~~ Prosecutorial Districts."

SECTION 2. G.S. 13-1 reads as rewritten:

"**§ 13-1. Restoration of citizenship.**

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate, of a probationer, or of a parolee by the ~~Division of Adult Correction of the Department of Public Safety;~~ agency of the State having jurisdiction of that person or of a defendant under a suspended sentence by the court.
(2) The unconditional pardon of the offender.
(3) The satisfaction by the offender of all conditions of a conditional pardon.
(4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.
(5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon."

SECTION 3.(a) G.S. 14-17(a) reads as rewritten:

"(a) 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 18 years of age at the time of the murder shall be punished ~~with imprisonment in the State's prison for life without parole.~~in accordance with Part 2A of Article 81B of Chapter 15A of the General Statutes."

SECTION 3.(b) G.S. 15A-1340.17(c) reads as rewritten:

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

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

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

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

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

PRIOR RECORD LEVEL

	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
A	Life Imprisonment ~~Without Parole or Death~~ With Parole or Without Parole, or Death, as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	240-300	276-345	317-397	365-456	Life Imprisonment Without Parole		Aggravated
B1	192-240	221-276	254-317	292-365	336-420	386-483	PRESUMPTIVE
	144-192	166-221	190-254	219-292	252-336	290-386	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	180-225	207-258	238-297	273-342	314-393	Aggravated

B2	125-157	144-180	165-207	190-238	219-273	251-314	PRESUMPTIVE
	94-125	108-144	124-165	143-190	164-219	189-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	83-104	96-120	110-138	127-159	146-182	Aggravated
C	58-73	67-83	77-96	88-110	101-127	117-146	PRESUMPTIVE
	44-58	50-67	58-77	66-88	76-101	87-117	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	73-92	84-105	97-121	111-139	128-160	Aggravated
D	51-64	59-73	67-84	78-97	89-111	103-128	PRESUMPTIVE
	38-51	44-59	51-67	58-78	67-89	77-103	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	33-41	38-48	44-55	50-63	Aggravated
E	20-25	23-29	26-33	30-38	35-44	40-50	PRESUMPTIVE
	15-20	17-23	20-26	23-30	26-35	30-40	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-23	21-27	25-31	28-36	33-41	Aggravated
F	13-16	15-19	17-21	20-25	23-28	26-33	PRESUMPTIVE
	10-13	11-15	13-17	15-20	17-23	20-26	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	14-18	17-21	19-24	22-27	25-31	Aggravated
G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE
	8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

SECTION 4. G.S. 15A-145.5 reads as rewritten:

"**§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

(1) A Class A through G felony or a Class A1 misdemeanor.

(2) An offense that includes assault as an essential element of the offense.

(3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

(5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.

(6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).

(7) An offense under G.S. 14-401.16.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

...

(c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic ~~violation, and was convicted of a nonviolent misdemeanor or nonviolent felony that is eligible pursuant to subsection (b) of this section.~~ violation. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other 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 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 a name-based State and national criminal history record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Justice for any outstanding warrants on pending criminal cases, 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 the petitioner are outstanding.

Upon filing of the petition, 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 thereto and shall be duly notified as to the date of the hearing of the petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to 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 presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered

against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information. If the court denies the petition, the order shall include a finding as to the reason for the denial.

...."

SECTION 4.1. G.S. 19A-2, as amended by S.L. 2013-3, reads as rewritten:

"**§ 19A-2. Purpose.**

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any person even though the person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal. Venue for any action filed under this ~~Chapter~~ Article shall only be in the county ~~in superior court~~ where any violation is alleged to have occurred."

SECTION 4.2. G.S. 20-171.19(a) reads as rewritten:

"(a) No person shall operate an all-terrain vehicle on a public street or highway or public vehicular area when such operation is otherwise permitted by law, unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets."

SECTION 5. G.S. 20-183.2(a1) reads as rewritten:

"(a1) Safety Inspection Exceptions. – The following vehicles shall not be subject to a safety inspection pursuant to this Article:

(1) Historic vehicles, as ~~defined~~ described in ~~G.S. 20-79.4(b)(63).~~ G.S. 20-79.4(b)(88).

(2) Buses titled to a local board of education and subject to the school bus inspection requirements specified by the State Board of Education and G.S. 115C-248."

SECTION 6. G.S. 28A-2-6(e) reads as rewritten:

"(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, ~~Rules 4.5,~~ Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 56, and 65 of G.S. 1A-1, the Rules of Civil Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided in G.S. 28A-2-7. In applying these Rules to an estate proceeding pending before the clerk of superior court, the term "judge" shall mean "clerk of superior court.""

SECTION 6.1. G.S. 62-333 reads as rewritten:

"**§ 62-333. Screening employment applications.**

The Chief Personnel ~~Officer or his designee~~ Officer, or that person's designee, of any public utility franchised to do business in North Carolina shall be permitted to obtain from the State Bureau of Investigation a confidential copy of criminal history record information for screening an applicant for employment with or an employee of a utility or utility contractor where the employment or job to be performed falls within a class or category of positions certified by the North Carolina Utilities Commission as permitting or requiring access to nuclear power facilities or access to or control over nuclear material.

The State Bureau of Investigation shall charge a reasonable fee to defray the administrative costs of providing criminal history record information for purposes of employment application screening. The State Bureau of Investigation is authorized to retain fees charged pursuant to

this section and to expend those fees in accordance with the ~~Executive Budget Act~~ State Budget Act for the purpose of discharging its duties under this section."

SECTION 7.(a) G.S. 74-54(b) reads as rewritten:

"(b) The applicant shall have the option of filing a separate bond for each operating permit or of filing a blanket bond covering all mining operations within the State for which the applicant holds a permit. The amount of each bond shall be based upon the area of affected land to be reclaimed under the approved reclamation plan or plans to which the bond pertains, less any area where reclamation has been completed and released from coverage by the Department, pursuant to G.S. 74-56, or based on any other criteria established by the ~~North Carolina Mining and Energy~~ Commission. The Department shall set the amount of the required bond in all cases, based upon a schedule established by the ~~North Carolina Mining and Energy~~ Commission."

SECTION 7.(b) G.S. 74-54.1(c) reads as rewritten:

"(c) The Department shall annually report on or before ~~1 September~~ September 1 to the Environmental Review Commission, the Fiscal Research Division, and the ~~North Carolina Mining and Energy~~ Commission on the cost of implementing this Article. The report shall include the fees established, collected, and disbursed under this section and any other information requested by the General Assembly or the Commission."

SECTION 7.(c) G.S. 74-67 reads as rewritten:

"**§ 74-67. Exemptions.**

The provisions of this Article shall not apply to those activities of the Department of Transportation, nor of any person, firm, or corporation acting under contract with ~~said~~ the Department of Transportation, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the public road systems of North Carolina; provided, that this exemption shall not become effective until the Department of Transportation shall have adopted reclamation standards applying to such activities and such standards have been approved by the ~~North Carolina Mining and Energy~~ Commission. The provisions of this Article shall not apply to mining on federal lands under a valid permit from the U.S. Forest Service or the U.S. Bureau of Land Management."

SECTION 8. G.S. 90B-3 reads as rewritten:

"**§ 90B-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Social Work Certification and Licensure Board.

~~(2) Licensed Clinical Social Worker. – A person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.~~

(3) Certified Master Social Worker. – A person who is certified under this Chapter to practice social work as a master social worker and is engaged in the practice of social work.

(4) Certified Social Work Manager. – A person who is certified under this Chapter to practice social work as a social work manager and is engaged in the practice of social work.

(5) Certified Social Worker. – A person who is certified under this Chapter to practice social work as a social worker and is engaged in the practice of social work.

(6) Clinical Social Work Practice. – The professional application of social work theory and methods to the biopsychosocial diagnosis, treatment, or prevention, of emotional and mental disorders. Practice includes, by

whatever means of communications, the treatment of individuals, couples, families, and groups, including the use of psychotherapy and referrals to and collaboration with other health professionals when appropriate. Clinical social work practice shall not include the provision of supportive daily living services to persons with severe and persistent mental illness as defined in G.S. 122C-3(33a).

(6a) Licensed Clinical Social Worker. – A person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.

(6b) Licensed Clinical Social Worker Associate. – A person issued an associate license to provide clinical social work services pursuant to G.S. 90B-7(f).

(7) Practice of Social Work. – To perform or offer to perform services, by whatever means of communications, for other people that involve the application of social work values, principles, and techniques in areas such as social work services, consultation and administration, and social work planning and research.

(8) Social Worker. – A person certified, licensed, or associate licensed by this Chapter or otherwise exempt under G.S. 90B-10."

SECTION 9. G.S. 115D-12 reads as rewritten:

"**§ 115D-12. Each institution to have board of trustees; selection of trustees.**

(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies. No member of the General Assembly may be appointed to a local board of trustees for a community college.

Group One – four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two – four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three – four trustees, appointed by the Governor.

Group Four – the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to ~~G.S. 115D~~ this Chapter shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in ~~G.S. 115D-12(a), Group Four.~~subsection (a) of this section, Group Four.

(b1) No person who has been employed full time by the community college within the prior 5 years and no spouse or child of a person currently employed full time by the community college shall serve on the board of trustees of that college.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term."

SECTION 9.1. G.S. 116-201(b)(1) reads as rewritten:

"(1) "Article" or "this Article" means ~~this article 23~~ Article 23 of Chapter 116 of the General Statutes of North ~~Carolina, presently comprising G.S. 116-201 through 116-209.24;~~Carolina;".

SECTION 10. G.S. 120-12.1 reads as rewritten:

"**§ 120-12.1. Reports on vacant positions in the Judicial Department and ~~three~~ two other departments.**

The Judicial Department, the Department of Justice, and the Department of Public Safety shall each report by February 1 of each year to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on all positions within that department that have remained vacant for 12 months or more. The report shall include the original position vacancy dates, the dates of any postings or repostings of the positions, and an explanation for the length of the vacancies."

SECTION 11. G.S. 122C-22(a) reads as rewritten:

"(a) ~~The~~ All of the following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office ~~practice;~~practice.

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance ~~abusers;~~abusers.

(3) State and federally operated ~~facilities;~~facilities.

(4) Adult care homes licensed under Chapter 131D of the General ~~Statutes;~~Statutes.

(5) Developmental child care centers licensed under Article 7 of Chapter 110 of the General ~~Statutes;~~Statutes.

(6) Persons subject to licensure under rules of the Social Services ~~Commission;~~Commission.

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation ~~Services;~~Services.

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in ~~G.S. 122C-3(14);~~G.S. 122C-3(14).

(9) Twenty-four-hour nonprofit facilities established for the purposes of shelter care and recovery from alcohol or other drug addiction through a 12-step, self-help, peer role modeling, and self-governance ~~approach;~~approach.

(10) Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Division of Adult Correction of the

Department of Public Safety, as described in ~~G.S. 148-19.1;~~ ~~and~~G.S. 148-19.1.

(11) A charitable, nonprofit, faith-based, adult residential treatment facility that does not receive any federal or State funding and is a religious organization exempt from federal income tax under section 501(a) of the Internal Revenue ~~Code; [and]~~Code.

(12) A home in which up to three adults, two or more having a disability, co-own or co-rent a home in which the persons with disabilities are receiving three or more hours of day services in the home or up to 24 hours of residential services in the home. The individuals who have disabilities cannot be required to move if the individuals change services, change service providers, or discontinue services."

SECTION 12. G.S. 136-89.210(1) reads as rewritten:

"(1) ~~Reserved.~~"

SECTION 12.1. The catchline of G.S. 143B-721 reads as rewritten:

"**§ 143B-721. Post-Release Supervision and Parole Commission – members; selection; removal; ~~chairman;~~ chair; compensation; quorum; services.**"

SECTION 13. G.S. 143B-1100(a) reads as rewritten:

"(a) There is hereby created the Governor's Crime Commission of the Department of Public Safety. The Commission shall consist of ~~36~~37 voting members and ~~six~~ five nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or the Chief Justice's designee), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of Public Safety (or the Secretary's designee), and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a "high crime area"), three police executives (one of whom shall be from a "high crime area"), eight citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one advocate for victims of all crimes, one representative from a domestic violence or sexual assault program, one representative of a "private juvenile delinquency program," and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Deputy Director of the Division of Juvenile Justice of the Department of Public Safety who is responsible for Intervention/Prevention programs, the Deputy Director of the Division of Juvenile Justice of the Department of Public Safety who is responsible for Youth Development programs, the Section Chief of the Section of Prisons of the Division of Adult Correction and the Section Chief of the Section of Community Corrections of the Division of Adult Correction."

SECTION 14.(a) G.S. 163-82.12 reads as rewritten:

"**§ 163-82.12. Promulgation of guidelines relating to computerized voter registration.**

The State Board of Elections shall make all guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These guidelines shall include provisions for all of the following:

...

(8b) Notifying voter-registration applicants whose drivers license or last four digits of social security number does not result in a validation, attempting to resolve the discrepancy, initiating investigations under G.S. 163-33(3) or challenges under Article 8 of this Chapter where warranted, and notifying any voters of the requirement under ~~G.S. 163-166.2(b2)~~ G.S. 163-166.12(b2) to present identification when voting.

...."

SECTION 14.(b) G.S. 163-166.12 reads as rewritten:

"**§ 163-166.12. Requirements for certain voters who register by mail.**

(a) Voting in Person. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. – An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b1) Notation of Identification Proof. – The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

(b2) Voting When Identification Numbers Do Not Match. – Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163-82.12 did not result in a match, and the number has not been otherwise validated by the board of elections, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If that identification is provided and the board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted. If the individual registers and votes under G.S. 163-82.6A, the identification documents required in that section, rather than those described in subsection (a) or (b) of this section, apply.

(c) The Right to Vote Provisionally. – If an individual is required under subsection (a), (b), or (b2) of this section to present identification in order to vote, but that individual does not

present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. – This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration. If any individual's number does not match, the individual shall provide identification as required in subsection (b2) of this section in the first election in which the individual votes.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law."

SECTION 15. The introductory language of Section 5 of S.L. 2012-11 reads as rewritten:

"**SECTION 5.** ~~G.S. 160A-60(a)~~ G.S. 160A-58.60(a) reads as rewritten:"

SECTION 16. The introductory language of Section 2(b) of S.L. 2012-120 reads as rewritten:

"**SECTION 2.(b)** ~~G.S. 140-3.15(g)~~ G.S. 140-5.13(g) reads as rewritten:"

SECTION 16.1. Section 1(b) of S.L. 2013-1 reads as rewritten:

"**SECTION 1.(b)** The State Board of Education shall make high school diploma endorsements, as provided under this section, available to students graduating from high school beginning with the 2014-2015 school year. The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the progress toward establishing specific college and career endorsements for high school diplomas and for awarding these endorsements by February 1, 2014. The State Board of Education shall submit the report on the impact of awarding the high school endorsements on high school graduation, college acceptance and remediation, and post-high school employment rates by September 1, 2016, and annually thereafter."

SECTION 16.2. The introductory language of Section 2 of S.L. 2013-26 reads as rewritten:

"**SECTION 2.** Article II of Chapter 5 of the Charter of the City of ~~Charlotte~~ Charlotte, being S.L. 2000-26, is amended by adding the following new section:".

SECTION 16.3. The introductory language of Section 3 of S.L. 2013-55 reads as rewritten:

"**SECTION 3.** ~~G.S. 47-29~~ G.S. 47-29.1 is amended by adding a new subsection to read:".

PART II. OTHER TECHNICAL AMENDMENTS AND OTHER CHANGES.

SECTION 17.(a) If House Bill 656, 2013 Regular Session, becomes law, G.S. 20-28.2(a1)(2), as amended by Section 1 of the act, reads as rewritten:

"(2) Innocent Owner. – A motor vehicle owner:

...

e. Who is (i) a rental car company as defined in ~~G.S. 66-201(a),~~ G.S. 66-201(a) and the vehicle was driven by a person who is not listed as an authorized driver on the rental ~~agreement,~~ agreement as defined in G.S. 66-201; or (ii) ~~is~~ a rental car company as defined in G.S. 66-201(a) and the vehicle was driven by a person who is listed as an authorized driver on the rental agreement as defined in G.S. 66-201 and if the offense resulting in seizure was an impaired driving offense, the rental car company has no actual knowledge of the revocation of the renter's drivers' license at the time the rental agreement is entered, or if the offense resulting in seizure was a felony speeding to elude arrest offense, the rental agreement expressly prohibits use of the vehicle while committing a felony; or

...."

SECTION 17.(b) This section becomes effective December 1, 2013.

SECTION 18. G.S. 83A-3 is amended by adding a new subsection to read:

"(c) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance shall be limited to the assets, income, and revenues of the Board."

SECTION 19.(a) If House Bill 276, 2013 Regular Session, becomes law, the introductory language of G.S. 160A-388(b1), as enacted by Section 1 of the act, reads as rewritten:

"(b1) Appeals. – The board of adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:".

SECTION 19.(b) This section becomes effective October 1, 2013.

PART III. EFFECTIVE DATE.

SECTION 20. Except where otherwise provided, this act is effective when it becomes law.

HOUSE BILL 92:
GSC Technical Corrections 2013

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 19, 2013
Introduced by:	Rep. Blust	**Prepared by:**	Bly Hall
Analysis of:	PCS to Third Edition H92-CSMN-6		Staff Attorney

BILL ANALYSIS:

[As introduced, this bill was identical to SB 101, as introduced by Sen. Hartsell, which is currently in Rules, Calendar, and Operations of the House. That bill received a favorable report from this Committee. Additional amendments that are identical to Sections 4.1, 4.2, 12.1, and 16.1 of this bill were added to SB 101 on the Senate floor. Sections 6.1, 9.1, 16.2, and 16.3 of this bill are new additional recommendations by the General Statutes Commission, and Part II (Sections 17-19) are new.]

Part I of the PCS for this bill (Sections 1-16.3) contains technical changes recommended by the General Statutes Commission. Please refer to the Commission's explanatory memorandum for an explanation.

Part II of the PCS for this bill (Sections 17 and 18) contains additional amendments:

Section 17 inserts a missing subject from a clause in G.S. 20-28.2(a1)(2), as amended by HB 656, and conforms the use of commas in the subdivision as amended.

Section 18 amends G.S. 83A-3 to expressly authorize the North Carolina Board of Architecture to deal with real property in the same manner as a private person or corporation, subject to the approval of the Governor and the Council of State. Several other occupational licensing boards have an equivalent express authorization in their statutes, including the State Board of Certified Public Accountant Examiners, the North Carolina Real Estate Commission, the North Carolina Appraisal Board, North Carolina Medical Board, the North Carolina Board of Nursing, the North Carolina Board of Pharmacy, the North Carolina State Board of Dental Examiners, the Cemetery Commission, the Board of Funeral Service, the North Carolina Auctioneers Commission, the State Licensing Board for General Contractors, the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors, the State Board of Examiners of Electrical Contractors, the State Board of Refrigeration Examiners, and the State Board of Examiners for Engineers and Surveyors.

Section 19 inserts a missing word. The first sentence in new subsection (b1) of G.S. 160A-388, as enacted by HB 276, should read, "The board of adjustment shall hear and decide appeals **from** decisions of administrative officials ...."

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

Kory Goldsmith
Director

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MEMORANDUM

To: Senate Committee on Judiciary II

From: General Statutes Commission

Re: **HB 92 (GSC Technical Corrections 2013)** (PCS)

Date: June 19, 2013

General Comments

Part I of the proposed committee substitute for this bill contains corrections of a technical nature to the General Statutes and session laws that are recommended by the General Statutes Commission. These amendments correct typographical, punctuation, redlining, and other obvious drafting and stylistic errors, make conforming changes, clarify an unintentional ambiguity, and update references and formatting.

Specific Comments

Section 1 makes a conforming change to the **title of Article 9 of Chapter 7A of the General Statutes**, from "Judicial Districts" to "Prosecutorial Districts." The article does not in fact deal with judicial districts but with district attorneys. The original title was "Solicitors and Solicitorial Districts." In 1973, the General Assembly replaced "solicitor" with "district attorney" but changed "solicitorial district" to "judicial district." See 1973 Reg. Sess. c. 47. Two years later, the General Assembly amended Article 9 to change "judicial district" to "prosecutorial district" throughout the article but failed to make a conforming change to the article title. See 1975 Reg. Sess. c. 956. Since that time, the title of Article 9 has continued to read "Judicial Districts" while the text of the article refers to "prosecutorial districts."

Section 2 amends **G.S. 13-1** to change the reference to a specific State agency having jurisdiction over the person of an inmate, probationer, or parolee to a generic reference. The amendment (i) makes it clear that a discharge by a predecessor agency continues to be included and (ii) eliminates the need to make a conforming change to this section if there is a future reorganization of State government.

Subsections 3(a) and **3(b)** make related amendments to **G.S. 14-17(a)** and **G.S. 15A-1340.17(c)**, respectively, to conform to other changes in the law made by S.L. 2012-148. That act provided new sentencing procedures for minors that included a possible sentence of life imprisonment with parole in cases where the minor would formerly have been subject to a mandatory sentence of life without parole. The amendment to G.S. 14-17(a) replaces a reference

to the former mandatory sentence for minors who commit a first degree murder with a reference to the part of the General Statutes that contain the new sentencing procedures. The amendment to G.S. 15A-1340.17(c) conforms a similar reference in the felony sentencing chart by adding a reference to life imprisonment with parole "as Established by Statute."

Section 4 amends **G.S. 15A-145.5(c)** to remove an incorrect cross-reference that would not actually be necessary to the meaning of the subsection if it were corrected. The introductory paragraph of G.S. 15A-145.5(c) refers to filing a petition to expunge "a nonviolent misdemeanor or nonviolent felony conviction" by a person who was convicted of a "nonviolent misdemeanor or nonviolent felony" that is eligible for expunction under "subsection (b) of this section." First, the intended reference was to subsection (a), which defines the terms "nonviolent misdemeanor" and "nonviolent felony." Second, the sentence does not need both references to "nonviolent misdemeanor" and "nonviolent felony"; the second reference is essentially duplicative.

Section 4.1 amends **G.S. 19A-2**, as amended by S.L. 2013-3, to correct a reference to the court in which actions under Article 1 (Civil Remedy for Protection of Animals) of Chapter 19A of the General Statutes are brought. Other sections in Article 1 make it clear that the district court is the proper court for an action under that article, not the superior court. In addition, the section corrects the reference to "Chapter" to "Article" to reflect the fact that it applies only to Article 1 and not the entire chapter.

Section 4.2 amends **G.S. 20-171.19(a)** to clarify that the subsection refers to operating an all-terrain vehicle when such operation is otherwise lawful.

Section 5 amends **G.S. 20-183.2(a1)** in two ways. First, it corrects a citation. The special license plate for historical vehicles was formerly in G.S. 20-79.4(b)(63), but it was moved and is now in G.S. 20-79.4(b)(88). Second, the amendment changes "defined" to "described" to more accurately reflect what is done in G.S. 20-79.4(b)(88). G.S. 20-79.88 is not actually a definition, although it does set out the qualifications for a "historical vehicle."

Section 6 amends **G.S. 28A-2-6(e)** to correct a typographical error in the punctuation. The reference to "Rules 4.5, 6(a) ... of ... the Rules of Civil Procedure" is incorrect. There is no "Rule 4.5." The period should have been a comma and the sentence should read, "Rules 4, 5, 6(a) ... of ... the Rules of Civil Procedure."

Section 6.1 amends **G.S. 62-333** to update a reference to the "Executive Budget Act" to the "State Budget Act," since the latter was replaced by the former in S.L. 2006-203. The section also makes the reference to the designee of the "Chief Personnel Officer" of a public utility gender neutral and corrects the punctuation of that phrase by inserting necessary commas.

Subsections 7(a), 7(b), and 7(c) amend **G.S. 74-54(b), 54.1(c), and 67**, respectively, to conform references to the Mining and Energy Commission. In these three statutes, the full name of the Commission is used. It is, however, unnecessary to use anything but "Commission" in these places, because the definitions section (G.S. 74-49) in the article in which these statutes appear (Article 7 of Chapter 74 of the General Statutes) defines "Commission" to mean the North Carolina Mining and Energy Commission. This is a common drafting device used to avoid the

need to repeat the full name throughout the article. Other sections in this article use the term "Commission" without qualification. Replacing the Commission's full name in these three statutes with the defined term conforms to usage in the rest of the article.

In addition, subsection 7(b) conforms the form of the date from English style to American style in G.S. 74-54.1(c), and subsection 7(c) makes a stylistic update in G.S. 74-67 by replacing the older "said" with "the."

Section 8 amends **G.S. 90B-3** to move the definition of the term "Licensed Clinical Social Worker" to its proper location in alphabetical order.

Section 9 updates the citation style in **G.S. 115D-12(a)** and **(b)**.

Section 9.1 amends **G.S. 116-201(b)(1)** to update the style of the reference to Article 23 and to delete as unnecessary the list of sections contained in that article, which in fact has been expanded so that it now includes G.S. 116-201 through G.S. 106-209.55.

Section 10 conforms the catchline of **G.S. 120-12.1** to the content of the section by changing the reference to "three" other departments to "two" others. The section formerly required reports from the Judicial Department and the Departments of Correction, Justice, and Crime Control and Public Safety. When the latter two departments were merged with the Department of Juvenile Justice to create the Department of Public Safety, the text of this section was amended to conform to the consolidation but the catchline was not.

Section 11 permanently corrects a problem with the conjunctions in **G.S. 122C-22(a)** by modernizing the style. When subdivision (12) was added to G.S. 122C-22(a), the conjunction was not moved to match. The current preferred drafting style for lists takes care of this type of problem by eliminating conjunctions, using periods rather than semicolons, and indicating in the lead-in language whether the entries in the list are conjunctive or disjunctive.

Section 12 amends **G.S. 136-89.210(1)** to correct a redlining error. G.S. 136-89.210 was enacted by S.L. 2008-225. Subdivision (1) was intended to be reserved for future codification, so the number (1) was included in the new section with the word "Reserved" beside it. The word "Reserved" was, however, inadvertently underlined, which had the effect of enacting that word as part of the statute. Normally, "Reserved" used in this fashion (as a placeholder) is an editorial insertion by the publisher of the General Statutes. When statutory text is later added at the reserved locations, the editorial insertion does not need to be expressly deleted (since it has not been legislatively inserted), so the customary practice is not to show it as lined out. If, however, the word "Reserved" is actually inserted by a session law, the word does later need to be expressly stricken out. There is obvious potential for confusion, since there is no way to tell from the statute itself whether "Reserved" is an editorial insertion or a legislative addition. To avoid confusion over cases when the word "Reserved" needs to be shown as stricken out and when it can simply be dropped as an editorial insertion, this amendment deletes it as a legislative insertion. Please note that the word "Reserved" will continue to appear at subdivision (1), but it will simply be the normal, editorially inserted, reserved line that does not need to be legislatively deleted.

Section 12.1 amends the catchline of **G.S. 143B-721** to conform the reference to "chairman" to "chair." The term was changed in the body of the statute by Section 17.25(a) of S.L. 2005-276.

Section 13 amends the introductory language of **G.S. 143B-1100(a)** to conform the introductory language's recitation of the numbers of voting and nonvoting members of the Governor's Crime Commission to the actual list set out in subsection (a).

Subsections 14(a) and **(b)** amend **G.S. 163-82.12(8b)** and **G.S. 163-166.2(b1)**, respectively. Subsection 14(a) amends G.S. 163-82.12(8b) to correct a citation. The reference to "G.S. 163-166.2(b2)" is incorrect; there is no subsection (b2) in G.S. 163-166.2. The intended reference was to G.S. 163-166.12(b2). Subsection 14(b) in turn amends G.S. 163-166.12(b1) to add a subsection catchline because all other subsections in that statute have subsection catchlines.

Section 15 corrects a typographical error in the amendatory language of **Section 5 of S.L. 2012-11.**

Section 16 corrects a typographical error in the amendatory language of **Section 2(b) of S.L. 2012-120.**

Section 16.1 inserts a missing word "from" in **Section 1(b) of S.L. 2013-1** (the phrase should read, "graduating **from** high school").

Section 16.2 amends the introductory language of **Section 2 of S.L. 2013-26** to include a reference to the session law that contains the Charter of the City of Charlotte.

Section 16.3 corrects a typographical error in the amendatory language of **Section 3 of S.L. 2013-55.** The intended reference was to G.S. 47-29.1 rather than G.S. 47-29.

The last section of this bill makes the bill effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 5

HOUSE BILL 399

Committee Substitute Favorable 4/3/13
Committee Substitute #2 Favorable 4/24/13
Fourth Edition Engrossed 4/30/13
Senate Health Care Committee Substitute Adopted 5/29/13

Short Title: Amend Laws Pertaining to DHHS.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES REQUESTED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO LAWS PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY; MEDICAID; AND PUBLIC HEALTH.

The General Assembly of North Carolina enacts:

PART I. CHANGES TO LAWS PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY

SECTION 1. G.S. 7B-507 reads as rewritten:

"**§ 7B-507. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain specific findings as to whether a county department of social services has made reasonable efforts to either prevent the need for placement or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the department is to provide or arrange for the foster care or other placement of the juvenile. After considering the department's recommendations, the court may order a specific placement the court finds to be in the juvenile's best interest; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7B-101;

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; ~~or~~ has committed a felony assault resulting in serious bodily injury to the child or another child of the ~~parent.~~parent; has committed sexual abuse against the child or another child of the parent; or has been required to register as a sex offender on any government-administered registry.

(c) When the court determines that reunification efforts are not required or shall cease, the court shall order a plan for permanence as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. If the court's determination to cease reunification efforts is made in a hearing that was duly and timely noticed as a permanency planning hearing, then the court may immediately proceed to consider all of the criteria contained in G.S. 7B-907(b), make findings of fact, and set forth the best plan of care to achieve a safe, permanent home within a reasonable period of time. If the court's decision to cease reunification efforts arises in any other hearing, the court shall schedule a subsequent hearing within 30 days to address the permanent plan in accordance with G.S. 7B-907. At any hearing at which the court orders that reunification efforts shall cease, the affected parent, guardian, or custodian may give notice to preserve the right to appeal that order in accordance with G.S. 7B-1001. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that party sought to offer in opposition to cessation of reunification that the court refused to admit.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

SECTION 2. 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:~~matters. The review shall be held within six months of accepting a

relinquishment of a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes unless the juvenile has become the subject of a decree of adoption.

~~(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) Repealed by 2007-276, s. 6, effective October 1, 2007.

(c) Notification of the court under this section shall be by a petition for review. ~~The petition shall set forth the circumstances necessitating the review under subsection (a) 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 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."

PART II. CHANGES TO LAWS PERTAINING TO MEDICAID

SECTION 3. G.S. 108A-70.5(b)(2) reads as rewritten:

"(2) Estate. – All the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1. The Department has all rights available to estate creditors, including the right to qualify as personal representative or collector of an estate. For individuals who have received benefits under a qualified long-term care partnership policy as described in G.S. 108A-70.4, "estate" also includes any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement."

SECTION 4. G.S. 28A-14-1(b) reads as rewritten:

"(b) Prior to filing the proof of notice required by G.S. 28A-14-2, every personal representative and collector shall personally deliver or send by first class mail to the last known address a copy of the notice required by subsection (a) of this section to all persons, firms, and corporations having unsatisfied claims against the decedent who are actually known or can be reasonably ascertained by the personal representative or collector within 75 days after the granting of ~~letters.~~letters and, if at the time of the decedent's death the decedent was receiving medical assistance as defined by G.S. 108A-70.5(b)(1), to the Department of Health and Human Services, Division of Medical Assistance. Provided, however, no notice shall be required to be delivered or mailed with respect to any claim that is recognized as a valid claim by the personal representative or collector."

SECTION 5. G.S. 28A-19-6(a) reads as rewritten:

"(a) After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of three thousand five hundred dollars ($3,500). This limitation shall not include burial place or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of three thousand five hundred dollars ($3,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

Third class. Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars ($1,500). The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable gravestone or burial place expenses which may be incurred; nor shall the preferential limitation of payment in the amount of one thousand five hundred dollars ($1,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

Fourth class. All dues, taxes, and other claims with preference under the laws of the United States.

Fifth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at the decedent's death. The Department of Health and Human Services is a sixth-class creditor for purposes of determining the order of claims against the estate; provided, however, that judgments in favor of other sixth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

Seventh class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Eighth class. A claim for equitable distribution.

Ninth class. All other claims."

SECTION 6. Article 8A of Chapter 36C of the General Statutes is amended by adding a new section to read as follows:

"**§ 36C-8-818. Notice of deceased Medicaid beneficiaries.**

If a trust was established by a person who at the time of that person's death was receiving medical assistance, as defined in G.S. 108A-70.5(b)(1), and the trust was revocable at the time of that person's death, then any trustee of that trust who knows of the medical assistance within 90 days of the person's death shall provide notice of that person's death to the Department of Health and Human Services, Division of Medical Assistance within 90 days of the person's death."

SECTION 7. G.S. 108C-3 reads as rewritten:

"**§ 108C-3. Medicaid and Health Choice provider screening.**

...

(c) Limited Categorical Risk Provider Types. – The following provider types are hereby designated as "limited" categorical risk:

...

(12) Physician or nonphysician practitioners (including nurse practitioners, CRNAs, physician assistants, physician extenders, occupational therapists,

speech/language pathologists, chiropractors, and audiologists), optometrists, dentists and orthodontists, and medical groups or clinics.

...

(15) Hearing aid dealers.
(16) Portable X-ray suppliers.
(17) Religious nonmedical health care institutions.
(18) Registered dieticians.
(19) Clearinghouses, billing agents, and alternate payees.
(20) Local health departments.

...

(e) Moderate Categorical Risk Provider Types. – The following provider types are hereby designated as "moderate" categorical risk:

...

(3) Critical Access Behavioral Health Agencies.
~~(4) Dentists and orthodontists.~~
(5) Hospice organizations.

...

(13) Revalidating agencies providing private duty nursing, home health, personal care services or in-home care services, or home infusion.
(14) Nonemergency medical transportation.

...."

PART III. CHANGES TO LAWS PERTAINING TO PUBLIC HEALTH

SECTION 8. G.S. 130A-22(b3) reads as rewritten:

"(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A or 19B of this Chapter or any rules adopted pursuant to Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed ~~one~~ five thousand dollars ~~($1,000)~~($5,000) for each day the violation continues for Article 19A of this Chapter. The penalty shall not exceed ~~seven hundred fifty~~five thousand dollars ~~($750.00)~~($5,000) for each day the violation continues for Article 19B of this Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under Article 19A or 19B."

SECTION 9. G.S. 130A-101(b) reads as rewritten:

"(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar within ~~five~~ten days after the birth. The physician or other person in attendance shall provide the medical information required by the certificate."

SECTION 10. G.S. 130A-209(a) reads as rewritten:

"**§ 130A-209. Incidence reporting of cancer; charge for collection if failure to report.**

(a) ~~All~~ By no later than October 1, 2014, all health care facilities and health care providers that detect, diagnose, or treat cancer or benign brain or central nervous system tumors shall submit by electronic transmission a report to the central cancer registry each diagnosis of cancer or benign brain or central nervous system tumors in any person who is screened, diagnosed, or treated by the facility or provider. The electronic transmission of these reports shall be in a format prescribed by the United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Program of Cancer Registries. The reports shall be made within six months ~~of~~ after diagnosis. Diagnostic, demographic and other information as prescribed by the rules of the Commission shall be included in the report."

PART IV. EFFECTIVE DATE

SECTION 11. This act becomes effective October 1, 2013.

HOUSE BILL 399:
Amend Laws Pertaining to DHHS.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 19, 2013
Introduced by:	Reps. Burr, Hollo, Avila	**Prepared by:**	Brenda J. Carter
Analysis of:	Fifth Edition		Committee Counsel

SUMMARY: ***House Bill 399 makes changes to statutes pertaining to child abuse, neglect and dependency, Medicaid, and public health, as requested by the Department of Health and Human Services.***

Part I: Changes to Laws Pertaining to Child Abuse, Neglect, and Dependency.

Section 1 of the bill would clarify G.S. 7B-507(a)(2), requiring that court orders placing a juvenile in the custody or responsibility of a county department of social services must include case specific findings as to the reasonable efforts made by the department to either prevent or eliminate the need for placement of the juvenile. In order for a State to be eligible for grants for child abuse/neglect prevention and treatment programs under the *Child Abuse Prevention and Treatment Reauthorization Act of 2010*, courts must have the option to not pursue reunification when a parent is found to have sexually abused a child or a parent is listed on a sex offender registry. **Section** 1 adds language consistent with requirements under 42 USCA 5106a.

Section 2 of the bill would amend G.S. 7B-909 to clarify that the review of an agency's plan for placement of a juvenile under relinquishment for adoption must take place within six months of accepting the relinquishment. The reviews would continue every six months until the juvenile is adopted. Similar placement reviews after termination of parental rights are provided for in G.S. 7B-908.

Part II: Changes to Laws Pertaining to Medicaid

Sections 3, 4, 5, and 6 of the bill address Medicaid Estate Recovery.

42 USC 1396p(b) requires that a state seek recovery for medical assistance paid on behalf of individuals in certain circumstances. The Omnibus Budget Reconciliation Act of 1993 made enactment of a Medicaid estate recovery program a condition for receiving federal funding for that state's Medicaid program. The North Carolina Medicaid Estate Recovery Plan is established by G.S. 108A-70.5. The purpose of the estate recovery plan is "to recover from the recipients of medical assistance an equitable amount of the state and federal shares of the cost paid to the recipient."

Section 3 of the bill provides that the Department of Health and Human Services (Department) would have all rights available to estate creditors, including the right to qualify as Personal Representative or Collector of an estate.

Section 4 of the bill would give the Division of Medical Assistance (DMA) notice as a known creditor when an estate is opened, if the decedent was receiving medical assistance at the time of death.

Section 5 would clarify that the Department is a sixth-class creditor for purposes of determining the order of claims against the decedent's estate. Judgments in favor of other sixth-class creditors docketed and in force before the Department seeks recovery for medical assistance would be paid prior to recovery by the Department.

Section 6 would require that trustees of revocable trusts who know the person who established the trust was receiving medical assistance give notice to the DMA within 90 days of the death of the person.

Section 7 of the bill addresses Medicaid and Health Choice provider and enrollment screening. Pursuant to federal regulation, all Medicaid and Health Choice providers must be screened according to one of three risk levels: limited, moderate, and high. **Section 7** would add additional providers to the already established categories.

Part III: Changes to the Laws Pertaining to Public Health

Section 8 of the bill would increase the potential penalty for violations of the DHHS Lead-Based Paint Program. The maximum penalty would be increased to $5,000 per day for each day a violation continues. Federal regulations establish a minimum penalty of $5,000 per day for State programs. 42 CFR 745.327.

Under G.S. 130A-101 there are currently two different time limits for filing a certificate of live birth with the local county registrar: one for births in a hospital or medical facility (five days) and one for all other births (ten days). **Section 9** would create one standard time limit of ten days for all births.

Section 10 of the bill would make a change to the central cancer registry, established under G.S. 130A-208. Pursuant to G.S. 130A-209 all health care providers and facilities are required to report each diagnosis of cancer or benign brain or central nervous system tumors. House Bill 399 would require that cancer registry reporting be done electronically by October 1, 2014, and that electronic transmission be done so in a format prescribed by the National Program of Cancer Registries.

EFFECTIVE DATE: The bill would become effective October 1, 2013.

**Susan Barham, Research Assistant, and Susan Sitze, Staff Attorney, substantially contributed to this summary.*

Amy Jo Johnson, counsel to Senate Health, also contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 510
Committee Substitute Favorable 4/10/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H510-CSLU-8 [v.1]
6/18/2013 9:04:37 AM

Short Title: Foster Care Children's Bill of Rights. (Public)

Sponsors:

Referred to:

April 3, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FOSTER CHILDREN'S BILL OF RIGHTS UNDER THE LAWS PERTAINING TO CONTROL OVER CHILD PLACING AND CHILD CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-10.1 reads as rewritten:

"**§ 131D-10.1. ~~Purpose.~~Foster Care Children's Bill of Rights; purpose.**

(a) It is the policy of this State to strengthen and preserve the family as a unit consistent with a high priority of protecting children's welfare. When a child requires care outside the family unit, it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family. However, the State recognizes there are instances when protecting a child's welfare outweighs reunifying the family unit, and as such, the care of residential care facilities providing high quality services that include meeting the children's educational needs as determined by the Department of Health and Human Services, Division of Social Services can satisfy the standard of protecting a child's welfare, regardless of the child's age, particularly when the sibling groups can be kept intact. To that end, the General Assembly promotes the following in the provision of foster care:

(1) A safe foster home free of violence, abuse, neglect, and danger.
(2) First priority regarding placement in a home with siblings.
(3) The ability to communicate with the assigned social worker or case worker overseeing the child's case and have calls made to the social worker or case worker returned within a reasonable period of time.
(4) Allowing the child to remain enrolled in the school the child attended before being placed in foster care, if at all possible.
(5) Having a social worker, when a child is removed from the home, to immediately begin conducting an investigation to identify and locate all grandparents, adult siblings, and other adult relatives of the child to provide those persons with specific information and explanation of various options to participate in placement of a child.
(6) Participation in school extracurricular activities, community events, and religious practices.
(7) Communication with the biological parents if the child placed in foster care receives any immunizations and whether any additional immunizations are needed if the child will be transitioning back into a home with his or her biological parents.

(8) Establishing and having access to a bank or savings account in accordance with State laws and federal regulations.

(9) Obtaining identification and permanent documents, including a birth certificate, social security card, and health records by the age of 16, to the extent allowed by federal and State law.

(10) The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings.

(11) Meaningful participation in a transition plan for those phasing out of foster care, including participation in family team, treatment team, court, and school meetings.

A violation of subdivisions (1) through (11) of this subsection shall not be construed to create a cause of action under this section against the State, the Department of Health and Human Services, or a person or entity providing foster care pursuant to this Article.

(b) The purpose of this Article is to assign the authority to protect the health, safety and well-being of children separated from or being cared for away from their families."

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

HOUSE BILL 510:
Foster Care Children's Bill of Rights

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 19, 2013
Introduced by:	Reps. Cotham, Hardister, Avila, Jackson	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition H510-CSLU-8		

SUMMARY: ***House Bill 510 would declare as policy specific various interests to be served in the provision of foster care. The proposed committee substitute makes technical and clarifying changes, and makes it clear that the provisions of the bill would not create a cause of action against the State or the Department of Health and Human Services.***

CURRENT LAW: Article 1A of Chapter 131D regulates the licensure of homes or facilities for children in foster care and assigns the authority to protect the health, safety and wellbeing of children separated from or being cared for away from their families to the Department of Health and Human Services (DHHS), Division of Social Services. G.S. 131D-10.1 is a declaration of the State's policy regarding protecting the welfare of children separated from or being cared for away from their families.

BILL ANALYSIS: House Bill 510 would add to the policy statement in G.S. 131D-10.1 the following list of specific rights that the General Assembly promotes for each child in foster care:

1. A safe foster home.
2. Priority consideration given to placement with siblings.
3. Communication with theassigned caseworker.
4. Continued enrollment in the child's current school, if possible.
5. Having a social worker immediately begin attempting to identify and inform relatives about options to participate in placement.
6. Participation in school, community and religious activities.
7. Communication with biological parents regarding immunizations.
8. Establishing and having access to financial accounts in accordance with State and federal laws and regulations.
9. Obtaining identification and other permanent documents by the age of 16, including birth certificate, social security card, and health records.
10. The use of appropriate communication measures to maintain contact with siblings with whom the child is not placed.
11. Participation in a transition plan for phasing out of foster care.

The bill specifies that violation of any of the enumerated rights shall not be construed to create a cause of action against the State, DHHS, or a person or entity providing foster care.

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

Janice Paul, counsel to House Judiciary Subcommittee C, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 615
Committee Substitute Favorable 5/9/13

Short Title: Remove Revocation for DWLR. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE PUNISHMENT OF REVOKING A PERSON'S DRIVERS LICENSE FOR COMMITTING CERTAIN DRIVING WHILE LICENSE REVOKED OFFENSES; TO MAKE DRIVING WHILE LICENSE REVOKED A NONMOVING VIOLATION FOR CERTAIN PURPOSES; AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 ~~misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.~~misdemeanor. If the person's drivers license was revoked for an impaired driving license revocation as defined in G.S. 20-28.2(a) or pursuant to G.S. 20-16(a)(5) or the person was charged with violating this subsection based upon a violation of any restriction of G.S. 20-179.3 or any restriction relating to the installation or use of an ignition interlock pursuant to G.S. 20-17.8, upon conviction of violating this subsection, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

If the person's license was originally revoked for an impaired driving revocation, the court may order as a condition of probation that the offender abstain from alcohol consumption and verify compliance by use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, for a minimum period of 90 days.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

...

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers

license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period. For purposes of this subsection, a violation of subsection (a) of this section that does not require an additional period of license revocation shall not be considered a moving violation.

...

(c3) A person whose license is revoked for violation of subsection (a) of this section where the person's license was originally revoked for an impaired driving ~~revocation,~~license revocation as defined in G.S. 20-28.2(a), or the person was charged with violating subsection (a) of this section based upon a violation of any restriction of G.S. 20-179.3 or any restriction relating to the installation or use of an ignition interlock pursuant to G.S. 20-17.8, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

...."

SECTION 2. G.S. 20-28.1(a) reads as rewritten:

"(a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, ~~except a conviction punishable under G.S. 20-28(a1),~~ such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Division shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) ~~hereof.~~hereof. For purposes of this subsection, the following shall not be considered a "motor vehicle moving offense":

(1) A violation of G.S. 20-28(a) that does not require an additional period of license revocation.

(2) A violation of G.S. 20-28(a1).

(3) A violation of G.S. 20-7 for driving a motor vehicle without a regular drivers license."

SECTION 3. G.S. 20-20.1(b) reads as rewritten:

"(b) Eligibility. – A person is eligible to apply for a limited driving privilege under this section if all of the following conditions apply:

(1) The person's license is currently revoked under G.S. 20-28(a) or G.S. 20-28.1.

(2) The person has complied with the revocation for the period required in subsection (c) of this section immediately preceding the date the person files a petition for a limited driving privilege under this section.

(3) The person's underlying offense is not an ~~offense involving impaired driving~~offense that would result in an impaired driving license revocation as defined in G.S. 20-28.2(a) or an offense involving a violation of any

restriction of G.S. 20-179.3 or any restriction relating to the installation or use of an ignition interlock pursuant to G.S. 20-17.8, and, if the person's license is revoked under G.S. 20-28.1 for committing a motor vehicle moving offense while driving with a revoked license, the moving offense is not an offense involving impaired driving.

(4) The revocation period for the underlying offense has expired.

(5) The revocation under G.S. 20-28(a) or G.S. 20-28.1 is the only revocation in effect.

(6) The person is not eligible to receive a limited driving privilege under any other law.

(7) The person has not held a limited driving privilege issued under this section at anytime during the three years prior to the date the person files the current petition.

(8) The person has no pending charges for any motor vehicle offense in this or in any other state and has no unpaid motor vehicle fines or penalties in this or in any other state.

(9) The person's drivers license issued by another state has not been revoked by that state.

(10) G.S. 20-9(e) or G.S. 20-9(f) does not prohibit the Division from issuing the person a license."

SECTION 4. This act becomes effective December 1, 2013, and applies to offenses on or after that date.

HOUSE BILL 615:
Remove Revocation for DWLR

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 19, 2013
Introduced by:	Reps. Ramsey, Baskerville, Turner	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 615 would limit the applicability of the requirement for an additional period of revocation upon a conviction of driving while license revoked, and make additional conforming changes.***

CURRENT LAW: G.S. 20-28(a) makes it a Class 1 misdemeanor for a person to drive while his or her drivers license is revoked for any reason other than an implied consent offense. Upon conviction, the person's license will be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

A person whose license is revoked may apply for a license (i) after 90 days if the revocation was for one year; (ii) after one year if the revocation was for two years; (iii) after three years if the revocation was permanent. The Division of Motor Vehicles (DMV) may issue a new license upon satisfactory proof that the person has not been convicted of a moving violation or a violation of the ABC laws or drug laws during the revocation period. If the original revocation was for impaired driving, the person's license may be conditionally restored if the driver obtains a substance abuse assessment and shows proof of financial responsibility.

BILL ANALYSIS: House Bill 615 would limit the applicability of the requirement for an additional period of revocation upon a conviction of driving while license revoked, so the additional period of revocation would be imposed only if the driving occurs while:

- The person's license is revoked for an impaired driving license revocation.
- The person's license is suspended after having accumulated 12 or more drivers license points within a three year period, or 8 or more points in the three-year period immediately following reinstatement of a suspended or revoked license.
- The person is violating a limited driving privilege, or any restriction relating to the installation or use of an ignition interlock system.

The bill would provide that, in determining whether a person has committed a "moving violation" during the period of revocation for purposes of establishing eligibility to apply for a new license, the term would only apply to a violation that requires an additional period of revocation.

Section 2 of the bill would make a conforming change to eliminate the requirement for DMV to revoke a person's drivers license for an additional period of time upon conviction of an offense that does not require an additional period of revocation as specified in Section 1 of the bill.

Section 3 of the bill would make a conforming to the statute defining the circumstances under which a person is eligible to apply for a limited driving privilege during a period of revocation.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

O. Walker Reagan
Director

H615-SMRV-138 E2 -V2

Research Division
(919) 733-2578

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 06/20/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. KEN KIRBY
4. BILLY FRITSCHER

Senate Committee on Judiciary II
Thursday, June 27, 2013, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 345	Increase Penalties for Misuse of 911 System.	Representative Faircloth Representative McNeill
HB 635	Involuntary Commitment Custody Orders.	Representative Lambeth Representative Conrad Representative Terry Representative Hanes
HB 783	Pyrotechnics Technical and Conforming Changes.	Representative Starnes
HB 802	Landlord/Tenant/Shorten Eviction Time.	Representative Earle Representative T. Moore Representative W. Brawley Representative Cunningham
HB 615	Remove Revocation for DWLR.	Representative Ramsey Representative Baskerville
HB 399	Amend Laws Pertaining to DHHS.-AB	Representative Turner Representative Burr Representative Hollo Representative Avila

Adjournment

Senate Judiciary II Committee
Thursday, June 27, 2013
Room 1124 LB, 10:00 a.m.

Minutes

The Senate Judiciary II Committee met at 10:00 a.m. on Thursday, June 27, 2013 in room 1124 of the Legislative Building. Ava Gruchacz of Oxford, Kena Nolan of Charlotte, Garrett Burlow of Boone, Victoria Jahnestock of Rocky Mount, Sarah Newby of Raleigh, Jacob Fueva of Hendersonville, Dana Walker of Chapel Hill and Evan Harakas of Gastonia served as pages. Senator Allran presided as chair.

H.B. 399 – Amend Laws Pertaining to DHHS - AB

The bill was returned to the Committee to address some concerns that were resolved prior to the meeting. Senator Tucker moved to reconsider the bill and the motion carried. The bill would make changes to statutes pertaining to child abuse, neglect and dependency, Medicaid, and public health, as requested by the Department of Health and Human Services (DHHS). Senator Allran moved to report the bill out favorably and the motion carried. A copy of the bill and the summary is attached.

H.B. 615 – Remove Revocation for DWLR

The bill was returned to the Committee to address some concerns regarding the fiscal note and the need to change the effective date. Senator Tucker moved to reconsider the bill and the motion carried. The bill would limit the applicability of the requirement for an additional period of revocation upon a conviction of driving while license revoked, and would make additional conforming changes. Senator Randleman offered an amendment changing the effective date. Senator Tucker moved to adopt the amendment, the motion carried. Senator McKissick moved for a favorable report as amended and the motion carried. A copy of the bill, the summary, and the amendment is attached.

H.B. 345 – Increase Penalties for Misuse of 911 System

Representative Faircloth was recognized to explain the bill and Senator Daniel moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would increase the penalty for misuse of the 911 system. It would reclassify the offense from a Class 3 misdemeanor to a Class 1 misdemeanor. It would also provide that the appointments of a chief of police and a sheriff to the State 911 Board would be upon the recommendations of the NC Association of Chiefs of Police and the NC Sheriffs' Association. Senator Cook moved for a favorable report for the PCS and the motion carried. A copy of the PCS and the summary is attached.

H.B. 783 – Pyrotechnics Technical and Conforming Changes

Representative Starnes was recognized to explain the bill. It would make various changes to the laws governing pyrotechnics and would reduce the regulation of pyrotechnics when used by the NC School of the Arts, motion picture productions, and pyrotechnic trainers. Senator Daniel offered a clarifying amendment. Senator Cook moved to adopt the amendment and the motion carried. Hal Pell, an Attorney with the Research Division, was recognized to further explain the

bill. Senator Davis moved for a favorable report with the amendment rolled into a new PCS. The motion carried. A copy of the bill, the summary, and the amendment is attached.

H.B. 802 – Landlord/Tenant/Shorten Eviction Time

Representative Earle was recognized to explain the bill. Senator Randleman moved to adopt the PCS for discussion and the motion carried. The CPS would amend laws relating to eviction proceedings to shorten the time period required to evict a tenant. Brenda Carter, an Attorney with the Research Division, was recognized to answer questions. Will Brownlee, representing the Apartment Association of NC, was recognized to answer questions. Bill Rowe, NC Justice Center, was recognized to speak in opposition of the bill and continuity differences of time limits throughout the bill. Senator Cook offered an amendment to correlate the days and moved for its adoption. The motion carried. Senator McKissick moved to report the bill favorably as a PCS with a referral to the Appropriations Committee. The motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 635 – Involuntary Commitment Custody Orders

Representative Hanes was recognized to explain the bill and answer questions. The bill would amend procedures for authorizing involuntary inpatient commitments; direct training protocols for physicians, psychologists or their designees in property service and return of service; and would direct the Secretary of DHHS to review and revise the rules designating facilities for the custody and treatment of involuntary clients. Mr. Pell was recognized to answer questions. Angela Carmen, Winston-Salem City Attorney, was recognized to speak in favor of the bill. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 10:41 a.m.

Senator Austin Allran
Presiding Chair

DeAnne Mangum
Committee Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 27, 2013	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	
HB 345	Increase Penalties for Misuse of 911 System.	Representative Faircloth Representative McNeill
HB 635	Involuntary Commitment Custody Orders.	Representative Lambeth Representative Conrad Representative Terry Representative Hanes
HB 783	Pyrotechnics Technical and Conforming Changes.	Representative Starnes
HB 802	Landlord/Tenant/Shorten Eviction Time.	Representative Earle Representative T. Moore Representative W. Brawley Representative Cunningham
HB 615	Remove Revocation for DWLR.	Representative Ramsey Representative Baskerville Representative Turner
HB 399	Amend Laws Pertaining to DHHS.-AB	Representative Burr Representative Hollo Representative Avila

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

CORRECTED REPORT #1

Monday, July 01, 2013

Senator Allran,
submits the following with recommendations as to passage:

FAVORABLE

HB **635** **(CS#1)** Involuntary Commitment Custody Orders.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **345** **(CS#1)** Increase Penalties for Misuse of 911 System.

Draft Number:	H345-PCS70482-RK-73
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

HB **615** **(CS#1)** Remove Revocation for DWLR.

Draft Number:	H615-PCS30585-RV-53
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

HB **802** **(CS#1)** Landlord/Tenant/Shorten Eviction Time.

Draft Number:	H802-PCS30586-RV-52
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

HB **783** **(CS#2)** Pyrotechnics Technical and Conforming Changes.

Draft Number:	H783-PCS70483-RK-74
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

HB **399** **(SCS#1)** Amend Laws Pertaining to DHHS.-AB

Draft Number:	H399-PCS80390-RV-51
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 6

Senator Floyd McKissick will handle HB 635
Senator Bill Cook will handle HB 345
Senator Shirley Randleman will handle HB 615
Senator Shirley Randleman will handle HB 802
Senator Warren Daniel will handle HB 783
Senator Ralph Hise will handle HB 399

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 399

Committee Substitute Favorable 4/3/13
Committee Substitute #2 Favorable 4/24/13
Fourth Edition Engrossed 4/30/13
Senate Health Care Committee Substitute Adopted 5/29/13

Short Title: Amend Laws Pertaining to DHHS.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES REQUESTED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO LAWS PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY; MEDICAID; AND PUBLIC HEALTH.

The General Assembly of North Carolina enacts:

PART I. CHANGES TO LAWS PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY

SECTION 1. G.S. 7B-507 reads as rewritten:

"**§ 7B-507. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain specific findings as to whether a county department of social services has made reasonable efforts to either prevent the need for placement or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the department is to provide or arrange for the foster care or other placement of the juvenile. After considering the department's recommendations, the court may order a specific placement the court finds to be in the juvenile's best interest; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7B-101;

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; ~~or~~ has committed a felony assault resulting in serious bodily injury to the child or another child of the ~~parent.~~parent; has committed sexual abuse against the child or another child of the parent; or has been required to register as a sex offender on any government-administered registry.

(c) When the court determines that reunification efforts are not required or shall cease, the court shall order a plan for permanence as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. If the court's determination to cease reunification efforts is made in a hearing that was duly and timely noticed as a permanency planning hearing, then the court may immediately proceed to consider all of the criteria contained in G.S. 7B-907(b), make findings of fact, and set forth the best plan of care to achieve a safe, permanent home within a reasonable period of time. If the court's decision to cease reunification efforts arises in any other hearing, the court shall schedule a subsequent hearing within 30 days to address the permanent plan in accordance with G.S. 7B-907. At any hearing at which the court orders that reunification efforts shall cease, the affected parent, guardian, or custodian may give notice to preserve the right to appeal that order in accordance with G.S. 7B-1001. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that party sought to offer in opposition to cessation of reunification that the court refused to admit.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

SECTION 2. 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:~~matters. The review shall be held within six months of accepting a

relinquishment of a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes unless the juvenile has become the subject of a decree of adoption.

~~(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) Repealed by 2007-276, s. 6, effective October 1, 2007.

(c) Notification of the court under this section shall be by a petition for review. ~~The petition shall set forth the circumstances necessitating the review under subsection (a) 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 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."

PART II. CHANGES TO LAWS PERTAINING TO MEDICAID

SECTION 3. G.S. 108A-70.5(b)(2) reads as rewritten:

"(2) Estate. – All the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1. The Department has all rights available to estate creditors, including the right to qualify as personal representative or collector of an estate. For individuals who have received benefits under a qualified long-term care partnership policy as described in G.S. 108A-70.4, "estate" also includes any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement."

SECTION 4. G.S. 28A-14-1(b) reads as rewritten:

"(b) Prior to filing the proof of notice required by G.S. 28A-14-2, every personal representative and collector shall personally deliver or send by first class mail to the last known address a copy of the notice required by subsection (a) of this section to all persons, firms, and corporations having unsatisfied claims against the decedent who are actually known or can be reasonably ascertained by the personal representative or collector within 75 days after the granting of ~~letters.~~letters and, if at the time of the decedent's death the decedent was receiving medical assistance as defined by G.S. 108A-70.5(b)(1), to the Department of Health and Human Services, Division of Medical Assistance. Provided, however, no notice shall be required to be delivered or mailed with respect to any claim that is recognized as a valid claim by the personal representative or collector."

SECTION 5. G.S. 28A-19-6(a) reads as rewritten:

"(a) After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of three thousand five hundred dollars ($3,500). This limitation shall not include burial place or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of three thousand five hundred dollars ($3,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

Third class. Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars ($1,500). The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable gravestone or burial place expenses which may be incurred; nor shall the preferential limitation of payment in the amount of one thousand five hundred dollars ($1,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

Fourth class. All dues, taxes, and other claims with preference under the laws of the United States.

Fifth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at the decedent's death. The Department of Health and Human Services is a sixth-class creditor for purposes of determining the order of claims against the estate; provided, however, that judgments in favor of other sixth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

Seventh class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Eighth class. A claim for equitable distribution.

Ninth class. All other claims."

SECTION 6. Article 8A of Chapter 36C of the General Statutes is amended by adding a new section to read as follows:

"**§ 36C-8-818. Notice of deceased Medicaid beneficiaries.**

If a trust was established by a person who at the time of that person's death was receiving medical assistance, as defined in G.S. 108A-70.5(b)(1), and the trust was revocable at the time of that person's death, then any trustee of that trust who knows of the medical assistance within 90 days of the person's death shall provide notice of that person's death to the Department of Health and Human Services, Division of Medical Assistance within 90 days of the person's death."

SECTION 7. G.S. 108C-3 reads as rewritten:

"**§ 108C-3. Medicaid and Health Choice provider screening.**

...

(c) Limited Categorical Risk Provider Types. – The following provider types are hereby designated as "limited" categorical risk:

...

(12) Physician or nonphysician practitioners (including nurse practitioners, CRNAs, physician assistants, physician extenders, occupational therapists,

speech/language pathologists, chiropractors, and audiologists), optometrists, dentists and orthodontists, and medical groups or clinics.

...

(15) Hearing aid dealers.
(16) Portable X-ray suppliers.
(17) Religious nonmedical health care institutions.
(18) Registered dieticians.
(19) Clearinghouses, billing agents, and alternate payees.
(20) Local health departments.

...

(e) Moderate Categorical Risk Provider Types. – The following provider types are hereby designated as "moderate" categorical risk:

...

(3) Critical Access Behavioral Health Agencies.
~~(4) Dentists and orthodontists.~~
(5) Hospice organizations.

...

(13) Revalidating agencies providing private duty nursing, home health, personal care services or in-home care services, or home infusion.
(14) Nonemergency medical transportation.

...."

PART III. CHANGES TO LAWS PERTAINING TO PUBLIC HEALTH

SECTION 8. G.S. 130A-22(b3) reads as rewritten:

"(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A or 19B of this Chapter or any rules adopted pursuant to Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed ~~one~~ five thousand dollars ~~($1,000)~~($5,000) for each day the violation continues for Article 19A of this Chapter. The penalty shall not exceed ~~seven hundred fifty~~five thousand dollars ~~($750.00)~~($5,000) for each day the violation continues for Article 19B of this Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under Article 19A or 19B."

SECTION 9. G.S. 130A-101(b) reads as rewritten:

"(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar within ~~five~~ten days after the birth. The physician or other person in attendance shall provide the medical information required by the certificate."

SECTION 10. G.S. 130A-209(a) reads as rewritten:

"**§ 130A-209. Incidence reporting of cancer; charge for collection if failure to report.**

(a) ~~All~~ By no later than October 1, 2014, all health care facilities and health care providers that detect, diagnose, or treat cancer or benign brain or central nervous system tumors shall submit by electronic transmission a report to the central cancer registry each diagnosis of cancer or benign brain or central nervous system tumors in any person who is screened, diagnosed, or treated by the facility or provider. The electronic transmission of these reports shall be in a format prescribed by the United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Program of Cancer Registries. The reports shall be made within six months ~~of~~ after diagnosis. Diagnostic, demographic and other information as prescribed by the rules of the Commission shall be included in the report."

PART IV. EFFECTIVE DATE

SECTION 11. This act becomes effective October 1, 2013.

HOUSE BILL 399:
Amend Laws Pertaining to DHHS.-AB

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 19, 2013
Introduced by:	Reps. Burr, Hollo, Avila	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Fifth Edition		

SUMMARY: ***House Bill 399 makes changes to statutes pertaining to child abuse, neglect and dependency, Medicaid, and public health, as requested by the Department of Health and Human Services.***

Part I: Changes to Laws Pertaining to Child Abuse, Neglect, and Dependency.

Section 1 of the bill would clarify G.S. 7B-507(a)(2), requiring that court orders placing a juvenile in the custody or responsibility of a county department of social services must include case specific findings as to the reasonable efforts made by the department to either prevent or eliminate the need for placement of the juvenile. In order for a State to be eligible for grants for child abuse/neglect prevention and treatment programs under the *Child Abuse Prevention and Treatment Reauthorization Act of 2010*, courts must have the option to not pursue reunification when a parent is found to have sexually abused a child or a parent is listed on a sex offender registry. **Section** 1 adds language consistent with requirements under 42 USCA 5106a.

Section 2 of the bill would amend G.S. 7B-909 to clarify that the review of an agency's plan for placement of a juvenile under relinquishment for adoption must take place within six months of accepting the relinquishment. The reviews would continue every six months until the juvenile is adopted. Similar placement reviews after termination of parental rights are provided for in G.S. 7B-908.

Part II: Changes to Laws Pertaining to Medicaid

Sections 3, 4, 5, and 6 of the bill address Medicaid Estate Recovery.

42 USC 1396p(b) requires that a state seek recovery for medical assistance paid on behalf of individuals in certain circumstances. The Omnibus Budget Reconciliation Act of 1993 made enactment of a Medicaid estate recovery program a condition for receiving federal funding for that state's Medicaid program. The North Carolina Medicaid Estate Recovery Plan is established by G.S. 108A-70.5. The purpose of the estate recovery plan is "to recover from the recipients of medical assistance an equitable amount of the state and federal shares of the cost paid to the recipient."

Section 3 of the bill provides that the Department of Health and Human Services (Department) would have all rights available to estate creditors, including the right to qualify as Personal Representative or Collector of an estate.

Section 4 of the bill would give the Division of Medical Assistance (DMA) notice as a known creditor when an estate is opened, if the decedent was receiving medical assistance at the time of death.

Section 5 would clarify that the Department is a sixth-class creditor for purposes of determining the order of claims against the decedent's estate. Judgments in favor of other sixth-class creditors docketed and in force before the Department seeks recovery for medical assistance would be paid prior to recovery by the Department.

Section 6 would require that trustees of revocable trusts who know the person who established the trust was receiving medical assistance give notice to the DMA within 90 days of the death of the person.

Section 7 of the bill addresses Medicaid and Health Choice provider and enrollment screening. Pursuant to federal regulation, all Medicaid and Health Choice providers must be screened according to one of three risk levels: limited, moderate, and high. **Section 7** would add additional providers to the already established categories.

Part III: Changes to the Laws Pertaining to Public Health

Section 8 of the bill would increase the potential penalty for violations of the DHHS Lead-Based Paint Program. The maximum penalty would be increased to $5,000 per day for each day a violation continues. Federal regulations establish a minimum penalty of $5,000 per day for State programs. 42 CFR 745.327.

Under G.S. 130A-101 there are currently two different time limits for filing a certificate of live birth with the local county registrar: one for births in a hospital or medical facility (five days) and one for all other births (ten days). **Section 9** would create one standard time limit of ten days for all births.

Section 10 of the bill would make a change to the central cancer registry, established under G.S. 130A-208. Pursuant to G.S. 130A-209 all health care providers and facilities are required to report each diagnosis of cancer or benign brain or central nervous system tumors. House Bill 399 would require that cancer registry reporting be done electronically by October 1, 2014, and that electronic transmission be done so in a format prescribed by the National Program of Cancer Registries.

EFFECTIVE DATE: The bill would become effective October 1, 2013.

**Susan Barham, Research Assistant, and Susan Sitze, Staff Attorney, substantially contributed to this summary.*

Amy Jo Johnson, counsel to Senate Health, also contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 615
Committee Substitute Favorable 5/9/13

Short Title: Remove Revocation for DWLR. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE PUNISHMENT OF REVOKING A PERSON'S DRIVERS LICENSE FOR COMMITTING CERTAIN DRIVING WHILE LICENSE REVOKED OFFENSES; TO MAKE DRIVING WHILE LICENSE REVOKED A NONMOVING VIOLATION FOR CERTAIN PURPOSES; AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28 reads as rewritten:

"**§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.**

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 ~~misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.~~misdemeanor. If the person's drivers license was revoked for an impaired driving license revocation as defined in G.S. 20-28.2(a) or pursuant to G.S. 20-16(a)(5) or the person was charged with violating this subsection based upon a violation of any restriction of G.S. 20-179.3 or any restriction relating to the installation or use of an ignition interlock pursuant to G.S. 20-17.8, upon conviction of violating this subsection, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

If the person's license was originally revoked for an impaired driving revocation, the court may order as a condition of probation that the offender abstain from alcohol consumption and verify compliance by use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, for a minimum period of 90 days.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

...

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

(1) If revoked under subsection (a) of this section for one year, the person may apply for a license after 90 days.

(2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers

license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.

(3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.

(4) If revoked under this section for two years, the person may apply for a license after one year.

(5) If revoked under this section permanently, the person may apply for a license after three years.

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period. For purposes of this subsection, a violation of subsection (a) of this section that does not require an additional period of license revocation shall not be considered a moving violation.

...

(c3) A person whose license is revoked for violation of subsection (a) of this section where the person's license was originally revoked for an impaired driving ~~revocation,~~license revocation as defined in G.S. 20-28.2(a), or the person was charged with violating subsection (a) of this section based upon a violation of any restriction of G.S. 20-179.3 or any restriction relating to the installation or use of an ignition interlock pursuant to G.S. 20-17.8, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

...."

SECTION 2. G.S. 20-28.1(a) reads as rewritten:

"(a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, ~~except a conviction punishable under G.S. 20-28(a1),~~ such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Division shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) ~~hereof.~~hereof. For purposes of this subsection, the following shall not be considered a "motor vehicle moving offense":

(1) A violation of G.S. 20-28(a) that does not require an additional period of license revocation.

(2) A violation of G.S. 20-28(a1).

(3) A violation of G.S. 20-7 for driving a motor vehicle without a regular drivers license."

SECTION 3. G.S. 20-20.1(b) reads as rewritten:

"(b) Eligibility. – A person is eligible to apply for a limited driving privilege under this section if all of the following conditions apply:

(1) The person's license is currently revoked under G.S. 20-28(a) or G.S. 20-28.1.

(2) The person has complied with the revocation for the period required in subsection (c) of this section immediately preceding the date the person files a petition for a limited driving privilege under this section.

(3) The person's underlying offense is not an ~~offense involving impaired driving~~offense that would result in an impaired driving license revocation as defined in G.S. 20-28.2(a) or an offense involving a violation of any

restriction of G.S. 20-179.3 or any restriction relating to the installation or use of an ignition interlock pursuant to G.S. 20-17.8, and, if the person's license is revoked under G.S. 20-28.1 for committing a motor vehicle moving offense while driving with a revoked license, the moving offense is not an offense involving impaired driving.

(4) The revocation period for the underlying offense has expired.

(5) The revocation under G.S. 20-28(a) or G.S. 20-28.1 is the only revocation in effect.

(6) The person is not eligible to receive a limited driving privilege under any other law.

(7) The person has not held a limited driving privilege issued under this section at anytime during the three years prior to the date the person files the current petition.

(8) The person has no pending charges for any motor vehicle offense in this or in any other state and has no unpaid motor vehicle fines or penalties in this or in any other state.

(9) The person's drivers license issued by another state has not been revoked by that state.

(10) G.S. 20-9(e) or G.S. 20-9(f) does not prohibit the Division from issuing the person a license."

SECTION 4. This act becomes effective December 1, 2013, and applies to offenses on or after that date.

HOUSE BILL 615:
Remove Revocation for DWLR

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 19, 2013
Introduced by:	Reps. Ramsey, Baskerville, Turner	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 615 would limit the applicability of the requirement for an additional period of revocation upon a conviction of driving while license revoked, and make additional conforming changes.***

CURRENT LAW: G.S. 20-28(a) makes it a Class 1 misdemeanor for a person to drive while his or her drivers license is revoked for any reason other than an implied consent offense. Upon conviction, the person's license will be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

A person whose license is revoked may apply for a license (i) after 90 days if the revocation was for one year; (ii) after one year if the revocation was for two years; (iii) after three years if the revocation was permanent. The Division of Motor Vehicles (DMV) may issue a new license upon satisfactory proof that the person has not been convicted of a moving violation or a violation of the ABC laws or drug laws during the revocation period. If the original revocation was for impaired driving, the person's license may be conditionally restored if the driver obtains a substance abuse assessment and shows proof of financial responsibility.

BILL ANALYSIS: House Bill 615 would limit the applicability of the requirement for an additional period of revocation upon a conviction of driving while license revoked, so the additional period of revocation would be imposed only if the driving occurs while:

- The person's license is revoked for an impaired driving license revocation.
- The person's license is suspended after having accumulated 12 or more drivers license points within a three year period, or 8 or more points in the three-year period immediately following reinstatement of a suspended or revoked license.
- The person is violating a limited driving privilege, or any restriction relating to the installation or use of an ignition interlock system.

The bill would provide that, in determining whether a person has committed a "moving violation" during the period of revocation for purposes of establishing eligibility to apply for a new license, the term would only apply to a violation that requires an additional period of revocation.

Section 2 of the bill would make a conforming change to eliminate the requirement for DMV to revoke a person's drivers license for an additional period of time upon conviction of an offense that does not require an additional period of revocation as specified in Section 1 of the bill.

Section 3 of the bill would make a conforming to the statute defining the circumstances under which a person is eligible to apply for a limited driving privilege during a period of revocation.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

O. Walker Reagan
Director

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 615

H. B. No. _____ DATE 6-27-2013

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Randleman

1 moves to amend the bill on page 3, line 21
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "December 1, 2013" and substituting
4 "June 1, 2014"
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PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 345
Committee Substitute Favorable 5/2/13
Third Edition Engrossed 5/15/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H345-CSRK-73 [v.3]
6/26/2013 2:41:00 PM

Short Title: Increase Penalties for Misuse of 911 System. (Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR MISUSE OF THE 911 SYSTEM, AND TO PROVIDE FOR RECOMMENDATIONS FOR CERTAIN APPOINTMENTS TO THE STATE 911 BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-111.4 reads as rewritten:

"**§ 14-111.4. Misuse of 911 system.**

It is unlawful for an individual who is not seeking public safety assistance, is not providing 911 service, or is not responding to a 911 call to access or attempt to access the 911 system for a purpose other than an emergency communication. A person who knowingly violates this section commits a ~~Class 3 misdemeanor. If a person knowingly accesses or attempts to access the 911 system for the purpose of avoiding a charge for voice communications service, as defined in G.S. 62A-40, and the value of the charge exceeds one hundred dollars ($100.00), the person commits a~~ Class 1 misdemeanor."

SECTION 2. G.S. 62A-41 reads as rewritten:

"**§ 62A-41. 911 Board.**

(a) Membership. – The 911 Board is established in the Office of Information Technology Services. Neither a local government unit that receives a distribution from the fund under G.S. 62A-46 nor a telecommunication service provider may have more than one representative on the 911 Board. The 911 Board consists of 17 members as follows:

...

(2) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives as follows:

a. An individual who is a ~~sheriff.~~sheriff, appointed upon the recommendation of the North Carolina Sheriff's Association.

b. An individual who represents CMRS providers operating in North Carolina.

c. An individual who represents the North Carolina chapter of the Association of Public Safety Communications Officials (APCO).

d. Two individuals who represent local exchange carriers operating in North Carolina, one of whom represents a local exchange carrier with less than 50,000 access lines.

e. A fire chief with experience operating or supervising a PSAP, appointed upon the recommendation of the North Carolina Firemen's Association.

(3) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate as follows:

a. An individual who is a chief of ~~police.~~police, appointed upon the recommendation of the North Carolina Association of Chiefs of Police.

b. Two individuals who represent CMRS providers operating in North Carolina.

c. A Rescue or Emergency Medical Services Chief with experience operating or supervising a PSAP, appointed upon the recommendation of the North Carolina Association of Rescue and Emergency Medical Services.

d. Two individuals who represent local exchange carriers operating in North Carolina, one of whom represents a local exchange carrier with less than 200,000 access lines.

...."

SECTION 3. Section 1 of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 345:
Increase Penalties for Misuse of 911 System

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 26, 2013
Introduced by:	Reps. Faircloth, McNeill	**Prepared by:**	Hal Pell
Analysis of:	PCS to Third Edition H345-CSRK-73		Committee Counsel

SUMMARY: House Bill 345 would increase the penalty for misuse of the 911 system, reclassifying the offense from a Class 3 misdemeanor to a Class 1 misdemeanor. The bill would also provide that the appointments of a chief of police and a sheriff to the State 911 Board would be upon the recommendations of the NC Association of Chiefs of Police and the NC Sheriffs' Association, respectively.

CURRENT LAW: G.S. 14-111.4 makes it a Class 3 misdemeanor for a person who is not seeking public safety assistance, or is not providing 911 service or responding to a 911 call to knowingly access or attempt to access the 911 system for a purpose other than an emergency communication. The offense is a Class 1 misdemeanor if the person knowingly accesses or attempts to access the 911 system to avoid a charge for voice communications service, and the value of the charge exceeds $100.

The 911 Board consists of 17 members and is established in the Office of Information Technology Services. It is responsible for the development of the 911 State Plan. In developing and updating the plan, the 911 Board monitors trends in voice communications service technology and in enhanced 911 service technology, investigates and incorporates GIS mapping and other resources into the plan, and formulates strategies for the efficient and effective delivery of enhanced 911 service.

BILL ANALYSIS:

Section 1 would increase the penalty for misuse of the 911 system from a Class 3 misdemeanor to a Class 1 misdemeanor. A defendant with no prior convictions could be punished by 1-45 days community punishment. Community punishments include probation, community service, outpatient drug/alcohol treatment, restitution and/or fines. The amount of any fine is in the discretion of the court.

Section 2 provides that the appointment of the police chief to the Board is upon the recommendation of the North Carolina Association of Chiefs of Police; the appointment of the sheriff is upon the recommendation of the North Carolina Sheriff's Association.

EFFECTIVE DATE: Section 1 of the bill would become effective December 1, 2013 and apply to offenses committed on or after that date. The remainder of the bill would be effective when it becomes law.

Brenda Carter, Staff Attorney, substantially contributed to this summary.

HOUSE BILL 783
Committee Substitute Favorable 4/24/13
Committee Substitute #2 Favorable 5/1/13

Short Title: Pyrotechnics Technical and Conforming Changes. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAWS GOVERNING PYROTECHNICS DISPLAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-410 reads as rewritten:

"**§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; exceptions; ~~permit~~ license required; sale to persons under the age of 16 prohibited.**

...

(a1) It shall be permissible for pyrotechnics to be exhibited, used, handled, manufactured, or discharged within the State, provided all of the following apply:

(1) The exhibition, use, or discharge is at a concert or public exhibition.

(2) All individuals who exhibit, use, handle, or discharge pyrotechnics in connection with a concert or public exhibition have completed the training and licensing required under Article 82A of Chapter 58 of the General Statutes. The display operator or proximate audience display operator, as required under Article 82A of Chapter 58 of the General Statutes, must be present at the concert or public exhibition and must personally direct all aspects of exhibiting, using, handling, or discharging the pyrotechnics. Notwithstanding this subdivision, the display operator for the University of North Carolina School of the Arts may appoint an on-site representative to supervise any performances that include a proximate audience display subsequent to the opening performance, provided that the representative (i) is a minimum of 21 years of age and (ii) is properly trained in the safe discharge of proximate audience displays.

(3) The display operator has secured written authority under G.S. 14-413 from the board of county commissioners of the county, or the city if authorized under G.S. 14-413(a1), in which the pyrotechnics are to be exhibited, used or discharged. Written authority from the board of commissioners or city is not required under this subdivision for a concert or public exhibition provided the display operator has secured written authority from (i) The University of North Carolina or the University of North Carolina at Chapel Hill under G.S. 14-413, and pyrotechnics are exhibited on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel ~~Hill.~~Hill or (ii) the University of North Carolina School of the Arts and pyrotechnics are exhibited on lands or in buildings

owned by the State and used by the University of North Carolina School of the Arts.

...

(a4) It shall be permissible for pyrotechnics to be exhibited, used, handled, manufactured, or discharged within the State as a special effect for a motion picture production, if the motion picture set is closed to the public or is separated from the public by a minimum distance of 500 feet.

(a5) It shall be permissible for pyrotechnics to be exhibited, used, handled, manufactured, or discharged within the State for pyrotechnic or proximate audience display instruction consisting of classroom and practical skills training approved by the Office of State Fire Marshal.

...

(c) The following definitions apply in this Article:

(1) Concert or public exhibition. – A fair, carnival, show of any description, or public celebration.

(2) Display operator. – An individual issued a display operator ~~permit~~ license under G.S. 58-82A-3.

(3) State Fire Marshal. – Defined in G.S. 58-80-1."

SECTION 2. G.S. 14-413 reads as rewritten:

"**§ 14-413. Permits for use at public exhibitions.**

(a) For the purpose of enforcing the provisions of this Article, the board of county commissioners of any county, or the governing board of a city authorized pursuant to subsection (a1) of this section, may issue permits for use in connection with the conduct of concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for the aforementioned purposes and none other. Provided that no such permit shall be required for a public exhibition under any of the following circumstances:

(1) The exhibition is authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or in buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill.

(2) The exhibition is authorized by the University of North Carolina School of the Arts and conducted on lands or in buildings owned by the State and used by the University of North Carolina School of the Arts.

(a1) For the purpose of enforcing the provisions of this Article, a board of county commissioners may authorize the governing body of any city in the county to issue permits pursuant to the provisions of this Article for pyrotechnics to be exhibited, used, or discharged within the corporate limits of the city for use in connection with the conduct of concerts or public exhibitions. The board of county commissioners shall adopt a resolution granting the authority to the city, and it shall remain in effect until withdrawn by the board of county commissioners adopting a subsequent resolution withdrawing the authority. If a city lies in more than one county, the board of county commissioners of each county in which the city lies must adopt an authorizing resolution. If any county in which the city lies withdraws the authority of the city to issue permits for the use of pyrotechnics, the authority of the city to issue permits for the use of pyrotechnics will end, and all counties within which the city lies must resume their authority to issue the permits.

(b) For any indoor use of pyrotechnics at a concert or public exhibition, the board of commissioners or the governing body of an authorized city may not issue any permit unless the local fire marshal or the State Fire Marshal (or in the case of The University of North Carolina or the University of North Carolina at Chapel Hill it may not authorize such concert or public exhibition unless the State Fire Marshal) has certified that:

(1) Adequate fire suppression will be used at the site.
(2) The structure is safe for the use of such pyrotechnics with the type of fire suppression to be used.
(3) Adequate egress from the building is available based on the size of the expected crowd.

(c) The requirements of subsection (b) of this section also apply to any city authorized to grant pyrotechnic permits by local act and to the officer delegated the power to grant such permits by local act.

(d) A board of county commissioners or the governing board of a city shall not issue a permit under this section unless the display operator provides proof of insurance in the amount of at least five hundred thousand dollars ($500,000) or the minimum amount required under the North Carolina State Building Code pursuant to G.S. 143-138(e), whichever is greater. A board of county commissioners or the governing board of a city may require proof of insurance that exceeds these minimum requirements."

SECTION 3. G.S. 58-82A-3 reads as rewritten:

"**§ 58-82A-3. Pyrotechnics display operator license.**

(a) License Required. – A display operator license issued by the Commissioner is required for an individual to obtain the necessary authorization under Article 54 of Chapter 14 of the General Statutes to exhibit, use, handle, manufacture, or discharge pyrotechnics at a concert or public exhibition in this State. A license issued under this section is valid for three years unless it is revoked by the Commissioner.

(b) Requirements. – The Commissioner may issue a display operator license to an individual if all of the following conditions are met:

(1) The individual is at least 21 years of age.
(2) The individual has assisted a display operator as an assistant display operator in the exhibition, use, or display of pyrotechnics at a concert or public exhibition, as allowed under Article 54 of Chapter 14 of the General Statutes, on at least three ~~occasions, or is a proximate audience display operator.~~occasions.
(3) The individual successfully completes the minimum training requirements established by the State Fire Marshal.
(4) The individual successfully passes an examination approved by the State Fire Marshal that demonstrates the individual has the knowledge to safely handle, store, and exhibit Class 1.4g, 1.3g, 1.2g, and 1.1g pyrotechnics or provides satisfactory evidence of current certification by a third party acceptable to the State Fire Marshal.
(5) Repealed by Session Laws 2010-22, s. 6, effective October 1, 2010.
(6) The individual has no violations of any provision of this Article or of any similar provision of any other state and submits an "Employer Possessor Letter of Clearance" issued to the individual by the Bureau of Alcohol, Tobacco and Firearms pursuant to ~~18 U.S.C. Chapter 40 or, if the Bureau of Alcohol, Tobacco and Firearms has not issued a Letter of Clearance to the individual, the individual signs a statement provided by the Commissioner affirming that the individual has not been convicted of violating 18 U.S.C. Chapter 40, Section 842(i).~~18 U.S.C. Chapter 40.

(b1) The Commissioner may issue a Limited Pyrotechnic Operator license to an individual meeting all the requirements of subsection (b) of this section with the exception of the "Employer Possessor Letter of Clearance" required by subdivision (6) of subsection (b) of this section if the individual signs a statement provided by the Commissioner affirming that the individual has not been convicted of violating 18 U.S.C. Chapter 40, Section 842(i), and is not

otherwise prohibited from possessing pyrotechnic materials by any provision of 18 U.S.C. Chapter 40, Section 842(i).

...

(e) Public exhibitions consisting of materials exempted by G.S. 14-414 are exempt from the operator license requirements."

SECTION 4. G.S. 58-82A-25 reads as rewritten:

"**§ 58-82A-25. Qualifications for event employees.**

Notwithstanding the provisions of this Article, the Commissioner or the fire code official for the jurisdiction issuing the pyrotechnics permit under G.S. 14-413 may certify an individual as an event employee if the individual meets the following requirements:

(1) Is at least 18 years of age.

(2) Possesses and provides a valid drivers license or other state-issued identification card.

(3) Correctly passes an on-site examination, administered by the Office of the State Fire Marshal or fire code official for the jurisdiction issuing the permit under G.S. 14-413, of a minimum of five questions to test basic pyrotechnic safety knowledge.

(4) Provides written confirmation from the licensed display operator or proximate audience display operator that the event employee is working under the supervision of the operator and that the event employee will not ~~handle the pyrotechnic materials.~~ be in the presence of the pyrotechnic materials without signing a statement provided by the Commissioner affirming that the individual has not been convicted of violating 18 U.S.C. Chapter 40, Section 842(i), or is not otherwise prohibited from possessing pyrotechnic materials by any provision of 18 U.S.C. Chapter 40, Section 842(i). The event employee shall not be allowed to discharge or be in the presence of the pyrotechnic materials unless under direct supervision of a licensed pyrotechnic operator or an on-site representative as provided in G.S. 14-410(a1)(2). An event employee certification is valid only for the concert or public exhibition listed on the pyrotechnic permit and cannot be renewed."

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 783: Pyrotechnics Technical and Conforming Changes

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 26, 2013
Introduced by:	Rep. Starnes	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 783 would make various changes to the laws governing pyrotechnics and would reduce the regulation of pyrotechnics when used by the North Carolina School of the Arts, motion picture productions, and pyrotechnic trainers.***

BILL ANALYSIS:

Section 1: Under current law, one of the requirements for the exhibition of pyrotechnics is that the display operator must be present at the exhibition and personally direct all aspects of the exhibition. Section 1 would allow the display operator for the University of North Carolina School of the Arts to appoint an on-site representative to supervise any performances that include a proximate audience display subsequent to the opening performance if the representative is a minimum of 21 years of age and is properly trained in the safe discharge of proximate audience displays.

Section 1 would also:

- Allow pyrotechnics to be exhibited as a special effect for a motion picture production, if the motion picture set is closed to the public or is separated from the public by a minimum distance of 500 feet.
- Allow pyrotechnics to be exhibited, used, handled, manufactured, or discharged for pyrotechnic or proximate audience display instruction consisting of classroom and practical skills training approved by the Office of State Fire Marshal.

Section 2: Under current law, local governments are authorized to issue permits for pyrotechnics exhibitions. This permitting authority does not apply to an exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill. Section 2 would provide that local government permitting authority does not apply to an exhibition authorized by the University of North Carolina School of the Arts and conducted on lands or in buildings in Forsyth County owned by the University of North Carolina School of the Arts.

Section 3: Under current law, an individual must obtain a display operator license from the Commissioner of Insurance (Commissioner) in order to exhibit pyrotechnics at a public exhibition.

One of the conditions of licensure is that the individual has assisted a display operator as an assistant display operator in the exhibition of pyrotechnics at a public exhibition on at least three occasions or is a proximate audience display operator. Section 3 removes the option of meeting this condition by being a proximate audience display operator.

Another condition of licensure is that the individual must submit an "Employer Possessor Letter of Clearance" issued by the Bureau of Alcohol, Tobacco, and Firearms or sign a statement provided by the Commissioner that the individual has not been convicted of violating the federal law that governs the possession and transport of explosives. Section 3 removes the option of meeting this condition by signing a statement issued by the Commissioner. Section 3 does provide, however, that the Commissioner may issue a Limited Pyrotechnic Operator license to an individual who meets all of the

requirements for licensure except for submitting an "Employer Possessor Letter of Clearance" if the individual signs a statement provided by the Commissioner that the individual has not been convicted of violating the federal law that governs the possession and transport of explosives and is not prohibited from possessing pyrotechnic materials under the same federal law.

Section 3 also provides that public exhibitions of materials exempt from regulation under the pyrotechnics statutes in Chapter 14 of the General Statutes are exempt from licensure requirements.

Section 4: Under current law, an event employee is an individual who works under the supervision of the display operator and who assists with the safety, setup, and discharge of a pyrotechnic display but does not handle the pyrotechnic materials. An event employee may be certified by the Commissioner or the fire code official for the jurisdiction issuing a pyrotechnics permit. Section 4 amends the certification requirements to:

- Require that the event employee must pass on on-site exam of at least five basic pyrotechnics questions.
- Provide that the event employee may not be in the presence of the pyrotechnic materials without signing a statement provided by the Commissioner affirming that the individual has not been convicted of violating the federal law that governs the possession and transport of explosives and is not prohibited from possessing pyrotechnic materials under the same federal law.
- Provide that the event employee may not discharge or be in the presence of pyrotechnic materials unless under the direct supervision of the licensed pyrotechnic operator.

EFFECTIVE DATE: House Bill 783 would be effective when it becomes law.

Jeffrey Hudson, counsel to House Regulatory Reform Subcommittee on Business and Labor, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 783

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H783-ARK-63 [v.1]

Page 1 of 1

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

Date June 27 ,2013

Senator DANIEL

moves to amend the bill on page 2, line 5, by rewriting the line to read:

"manufactured, or discharged within the State as a special effect by a production company, as defined in G.S. 105-164.3(30), for a motion picture production,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

H783-ARK-63-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 802
Committee Substitute Favorable 5/8/13
Third Edition Engrossed 5/13/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H802-CSRV-52 [v.1]
6/26/2013 6:54:01 PM

Short Title: Landlord/Tenant/Shorten Eviction Time. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO LANDLORD AND TENANT RELATIONSHIPS TO SHORTEN THE TIME PERIOD REQUIRED TO EVICT A TENANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-222 reads as rewritten:

"**§ 7A-222. General trial practice and procedure.**

(a) Trial of a small claim action before a magistrate is without a jury. The rules of evidence applicable in the trial of civil actions generally are observed. At the conclusion of plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a prima facie case. If a judgment of dismissal is not rendered the defendant may introduce evidence. At the conclusion of all the evidence the magistrate may render judgment or may in his discretion reserve judgment for a period not in excess of 10 ~~days.~~ days, except as provided in subsection (b) of this section.

(b) In a small claim action for summary ejectment, the magistrate shall render judgment on the same day on which the conclusion of all the evidence and submission of legal authorities occurs, unless the parties concur on an extension of additional time for entering the judgment and except for more complex summary ejectment cases, in which event the magistrate shall render judgment within five business days of the hearing. Complex summary ejectment cases include cases brought for criminal activity, breaches other than nonpayment of rent, evictions involving SECTION 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) or public housing tenants, and cases with counterclaims."

SECTION 2. G.S. 7A-223 reads as rewritten:

"**§ 7A-223. Practice and procedure in small claim actions for summary ejectment.**

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after

expiration of the five-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon."

SECTION 5. G.S. 42-36.2 reads as rewritten:

"**§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of evicted tenant's personal property.**

(a) When Sheriff May Remove Property. – Before removing a tenant's personal property from demised premises pursuant to a writ for possession of real property or an order, the sheriff shall give the tenant notice of the approximate time the writ will be executed. The time within which the sheriff shall have to execute the writ shall be no more than ~~seven~~ five days from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as provided in the writ, no earlier than the time specified in the notice, unless:

(1) The landlord, or his authorized agent, signs a statement saying that the tenant's property can remain on the premises, in which case the sheriff shall simply lock the premises; or

(2) The landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the tenant has paid all court costs charged to him and has satisfied his indebtedness to the landlord.

Upon receipt of either statement by the landlord, the sheriff shall return the writ unexecuted to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted because the landlord signed a statement described in subdivision (2) of this subsection, the clerk shall make an entry of satisfaction on the judgment docket. If the sheriff padlocks, the costs of the proceeding shall be charged as part of the court costs.

(b) Sheriff May Store Property. – When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. Except for the disposition of manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2), within 10 days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that 10 day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the 10 day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. ~~After the expiration of the 10 day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g).~~ If, after being placed in lawful possession by execution of a writ, the landlord has offered to release the tenant's property and the tenant fails to retrieve such property during the landlord's regular business hours within seven days, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request release of the property within 10 days, all costs of summary ejectment, execution and storage proceedings shall be charged to the tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale.

(c) Liability of the Sheriff. – A sheriff who stores a tenant's property pursuant to this section and any person acting under the sheriff's direction, control, or employment shall be liable for any claims arising out of the willful or wanton negligence in storing the tenant's property.

(d) Notice. – The notice required by subsection (a) shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within ~~10~~ five days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

(1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;

(2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or

(3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

SECTION 6. The Administrative Office of the Courts is directed to develop a form for parties in small claim actions for summary ejectment to inform them of the time line and process in summary ejectment actions. The Clerk of Superior Court shall make the form available to the parties.

SECTION 7. This act becomes effective September 1, 2013, and applies to all actions for summary ejectment filed on and after that date.

HOUSE BILL 802:
Landlord/Tenant/Shorten Eviction Time

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 26, 2013
Introduced by:	Reps. Earle, T. Moore, W. Brawley, Cunningham	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Third Edition H802-CSTJ-37		

SUMMARY: ***The proposed committee substitute for House Bill 802 would amend laws relating to eviction proceedings to shorten the time period required to evict a tenant.***

CURRENT LAW: The process for evicting a tenant in North Carolina is called summary ejectment, and is handled in small claims court. There must be some valid reason for evicting the tenant such as:

- The lease is over and tenant will not leave;
- The tenant has not paid rent and has been given ten days to pay;
- The tenant has breached some other provision of the lease for which eviction is allowed under the terms of the lease; or
- The tenant has engaged in certain criminal activity which allows for eviction.

Once the decision is made to pursue eviction, the landlord files a "Complaint in Summary Ejectment" in small claims court. The magistrate will hold a hearing and determine whether the landlord is entitled to possession of the premises. If the court finds that the landlord is entitled to possession, the tenant has ten days to file an appeal to district court. In order to file the appeal, the tenant must post a bond in the amount of the past-due rent as determined by the magistrate, as well as promise to continue paying rent as it comes due. If there is no timely appeal, then the clerk of court may issue a Writ of Possession, which allows the sheriff to actually evict the tenant.

BILL ANALYSIS:

Section 1. Current law requires the magistrate to render judgment within ten days of the conclusion of evidence in a summary ejectment action. House Bill 802 would require the magistrate to render judgment on the same day that the evidence is concluded, unless the parties agree to an extension of time or the summary ejectment is considered to be "complex." Judgement in a "complex" case would be rendered within five business days of the hearing.

Section 2 would amend the statute governing the practice and procedure in summary ejectment actions by adding a provision specifying that a magistrate in an eviction proceeding may continue the case only for good cause shown, but in no event for a period longer than five days or until the next session of small claims court, without the agreement of both parties.

Section 3 would amend the statute governing the appeal of judgments or orders entered by a magistrate. The bill specifies that if a party fails to pay the court costs to appeal within 10 days after entry of judgment in a summary ejectment action, the appeal will be automatically dismissed, except that an appellant who applies to proceed as an indigent would have an additional five days to perfect the appeal by paying the court costs.

This section of the bill also provides that if a defendant perfects the appeal according to the requirements of the law, but failed to raise a defense in the magistrate's court, failed to file a responsive pleading in the district court action, and failed to make any payment when due under the appeal bond, the plaintiff may file a motion to dismiss the appeal, and the court must grant the motion to dismiss without a hearing, if the defendant does not file and serve a response or make the required payment within ten days.

Section 4 of the bill would reduces from 10 days to 7 days the period of time a landlord must hold a tenant's personal property before disposing of it, the time a tenant has to request possession of the tenant's property, and the time period for accounting for surplus funds from a sale of the property.

Section 5 would shorten the time within which a sheriff must execute a writ for possession of the rental property, decreasing it from 7 to 5 days. This section would also permit a landlord placed in lawful possession of premises by writ for possession to throw away, dispose of, or sell the tenant's unclaimed personal property after 7 days (currently 10 days).

Section 8 would require the Administrative Office of the Courts to develop and make available a form for parties in small claim actions for summary ejectment to inform them of the timeline and process in summary ejectment actions.

EFFECTIVE DATE: The bill would act become effective September 1, 2013, and would apply to all actions for summary ejectment filed on and after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 802 DATE June 27

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Cook
)
Sen.)

1 moves to amend the bill on page 5, line 7
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "five and substituting "seven"
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SIGNED _____

ADOPTED Allran FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 635*
Committee Substitute Favorable 4/24/13

Short Title: Involuntary Commitment Custody Orders. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) ALLOW A CLERK OR ASSISTANT OR DEPUTY CLERK OF SUPERIOR COURT OR A MAGISTRATE TO ISSUE BY FACSIMILE OR ELECTRONIC MAIL TRANSMISSION AN INVOLUNTARY INPATIENT COMMITMENT CUSTODY ORDER TO A PETITIONING PHYSICIAN, ELIGIBLE PSYCHOLOGIST, OR DESIGNEE AT A TWENTY-FOUR-HOUR FACILITY WHEN THE RESPONDENT IS ALREADY PHYSICALLY PRESENT AT THE TWENTY-FOUR-HOUR FACILITY, (2) ESTABLISH PROTOCOLS FOR THE TRAINING OF PHYSICIANS, ELIGIBLE PSYCHOLOGISTS, OR DESIGNEES, AND (3) DIRECT THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO REVIEW AND REVISE THE RULES DESIGNATING FACILITIES FOR THE CUSTODY AND TREATMENT OF INVOLUNTARY CLIENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-261(d) reads as rewritten:

"(d) If the affiant is a physician or eligible psychologist, ~~the~~ all of the following apply:

(1) The affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit.

(2) This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c).

(3) If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician or eligible psychologist shall contact the local management entity that serves the county where the respondent resides or the local

management entity that coordinated services for the respondent to inform the local management entity that the respondent has been scheduled for an appointment with an outpatient treatment physician or center.

(4) If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252, provided that if a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision and, upon further examination, released in accordance with G.S. 122C-263(d)(2).

(5) If the affiant is a physician or eligible psychologist at a 24-hour facility described in G.S. 122C-252 who recommends inpatient commitment; the respondent is physically present on the premises of the same 24-hour facility; and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, then the clerk or magistrate may issue an order by facsimile transmission or may issue an electronically scanned order by electronic transmission to the physician or eligible psychologist at the 24-hour facility, or a designee, to take the respondent into custody at the 24-hour facility and proceed according to G.S. 122C-266. Upon receipt of the custody order, the physician or eligible psychologist at the 24-hour facility, or a designee, shall immediately (i) notify the respondent that the respondent is not under arrest and has not committed a crime but is being taken into custody to receive treatment and for the respondent's own safety and the safety of others, (ii) take the respondent into custody, and (iii) complete and sign the appropriate portion of the custody order and return the order to the clerk or magistrate either by facsimile transmission or by scanning it and sending it by electronic transmission. The physician or eligible psychologist, or a designee, shall mail the original custody order no later than five days after returning it by means of facsimile or electronic transmission to the clerk or magistrate. The clerk or magistrate shall file the original custody order with the copy of the custody order that was electronically returned.

a. Notwithstanding the provisions of this subdivision, a clerk or magistrate shall not issue a custody order to a physician or eligible psychologist at a 24-hour facility, or a designee, if the physician or eligible psychologist, or a designee, has not completed training in proper service and return of service. As used in this subdivision, the term "designee" includes the 24-hour facility's on-site police security personnel.

b. The Department of Health and Human Services shall cooperate and collaborate with the Administrative Office of the Courts and the UNC School of Government to develop protocols to implement this section, including a procedure for notifying clerks and magistrates of the names of the physicians, psychologists, and designees who have completed the training. The Secretary of the Department shall oversee implementation of these protocols.

(6) If the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the

area authority shall designate the facility to which the respondent is to be transported.

(7) If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

SECTION 2. G.S. 122C-261(e) reads as rewritten:

"(e) ~~Upon~~ Except as provided in subdivision (5) of subsection (d) of this section, upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State."

SECTION 3. The Secretary of the Department of Health and Human Services shall review and update its list of facilities designated under G.S. 122C-252 as facilities for the custody and treatment of involuntary clients. The Secretary shall ensure that each designation identifies the specific units or areas of the 24-hour facility to which the designation applies and includes all units or areas necessary to facilitate the orderly and safe movement of a respondent from one unit or area to another.

SECTION 4. This act becomes effective October 1, 2013.

HOUSE BILL 635:
Involuntary Commitment Custody Orders

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 26, 2013
Introduced by:	Reps. Lambeth, Conrad, Terry, Hanes	**Prepared by:**	Hal Pell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 635 amends procedures for authorizing involuntary inpatient commitments; direct training protocols for physicians, psychologists or their designees in proper service and return of service; and would direct the Secretary of the Department of Health and Human Services to review and revise the rules designating facilities for the custody and treatment of involuntary clients.***

[As introduced, this bill was identical to S687, as introduced by Sens. Parmon, Brunstetter, which is currently in Senate Judiciary I.]

BILL ANALYSIS:

Sections 1 and 2. The act would add a new subsection (5) to G.S. 122C-261(d) to provide that

- If a person is physically present at a 24-hour facility and a physician or psychologist at the facility recommends that the person be involuntarily committed, and (2) a clerk or magistrate finds probable cause to believe the person meets the commitment criteria, then the clerk or magistrate may transmit the custody order to the physician or psychologist, or a designee, by (i) means of facsimile, or (ii) a scanned copy by e-mail. The term "designee" includes the facility's on-site security personnel.

Upon receiving the custody order, the physician, psychologist or designee is required to do the following:

- Notify the respondent that the respondent has neither committed a crime nor is under arrest, but is being taken into custody for safety and treatment reasons.
- Take the respondent into custody.
- Complete and sign the custody order and return it to the clerk or magistrate via facsimile or email.
- Mail the original custody order to the clerk or magistrate within five days of the facsimile or email return.

The clerk or magistrate must file the original custody order with the electronically-transmitted copy. A clerk or magistrate is not to issue custody orders to a physician, psychologist or designee who has not completed training in proper service and return of service. The Secretary of the Department of Health and Human Services must collaborate with the Administrative Office of the Courts and the UNC School of Government to develop training protocols, and to inform clerks and magistrates as to who has completed the training.

The act also amends G.S. 122C-261(e) to provide an exception to the provision requiring a law enforcement officer or other person to take a person into custody when that person is already in custody at the 24-hour facility.

Section 3. Currently, G.S. 122C-252 requires the Secretary of DHHS to designate certain facilities as facilities for the custody and treatment of involuntary clients. The act would require the Secretary of

DHHS to review and revise its list of facilities designated under G.S. 122C-252 to ensure that each designation specifies whether the entire facility is designated and, if not, that the designation specifically identifies the units or areas of the 24-hour facility associated with the custody and treatment of involuntary clients, and also to ensure that the units or areas designated can assure the safety of the client and the general public as a client moves or is transferred from one area or unit to another.

EFFECTIVE DATE: This act would become effective October 1, 2013.

Jan Paul, Staff Attorney, substantially contributed to this summary.

NAMI | NW Piedmont
National Alliance on Mental Illness

5035 Salemtowne Drive
Winston-Salem NC 27106

April 12, 2013

Dear Sir:

As president of NAMI NW Piedmont, I wish to go on record as supporting SB687/HB635 Involuntary Commitment Custody Orders.

Allowing doctors and magistrates to communicate by FAX without involving law enforcement in the delivery of involuntary commitment papers, especially when a patient is already at the hospital where s/he will stay, would be a step that would reduce the stigma associated with mental illness.

Stress is a known crisis accelerator for those with mental illnesses. Allowing medical staff, as opposed to law enforcement officers, to serve the papers would make the necessary hospitalization seem more therapeutic and less punishing to the ill person. Hospitalization would become more of an appropriate medical intervention and less of an incarceration.

In addition to lessening stigma and stress for the patient, releasing law enforcement officers from this responsibility would free their time for more appropriate activities as they serve and protect our citizens.

Sincerely,
Louise B. Whealton
President, NAMI NW Piedmont

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II ROOM: 1124

DATE: 6-27 TIME: 10 Am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Ava Gruchacz	Oxford	McKissick
2. Kena Nolan	Charlotte	Clodfelter
3. Garrett Barlow	Boone	Soucek
4. Victoria Jahnestock	Rocky Mount	Bryant
5. Sarah Newby	Raleigh	Curtis
6. Jacob Fuava	Hendersonville	Brodaca
7. Dana Walker	Chapel Hill	Kinnaird
8. Evan Harakas	Gastonia	Harrington
9.		
10.		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE JUDICIARY II**

DATE: 06/27/13 ROOM: 1124

1. ASHLEY MICKENS
2. ROBERT YOUNG
3. BILLY FRITSCHER
4. HAL ROACH

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 27, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joan Akalaonu	GAL
Nathan Batts	NCBA
Becki Gray	John Locke Foundation
Colleen Kachaluk	AANC
[illegible]	CCT
Nathan Ramsey	Rep, NC House
Mildred Spearman	NCADC
[illegible]	NMRS
George Smith	NP
Elaine Woo	NCLM
[illegible]	NCRDS
Susanne Doni	WM

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 27, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Richard Taylor	NC 911 Board
Rose Williams	NCDOJ
Rob Boegner	NCDOI
Bob Mack	NCDOI
Bill Rowe	NC Justice Center
Will Brownlee	Apartment Assoc. of NC.
Alex Miller	KLG
Erin Wynia	NCLM
Annaliese Dolph	DL
Andrew Cagle	NC Sheriffs' Assn.
Peg Dorer	Conf of DAs

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 27, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
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Kay Emanuel	School of Government
Keith Richards-	City of Charlotte
Lauren Whaley	NCCUL
Christina Jones	NCSA
Gregg Sloan	NC Sheriffs' Assoc.
Andy Chase	KMA
Mike Mann	NCFAA
Cassandra Stanley	NCACC
Al Byrd	NCJC
Lori Andrews	CMA
Mike Easley	Former Gov

VISITOR REGISTRATION SHEET

Senate J II Committee
Name of Committee

June 27, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Thomas C. Caves, Jr.	NCSBI
Amanda Horaker	TSS
Sarah Wolfe	MWC LLC
Chris Sigmann	Intern - Sen. Rainnaird
Sarah Hardin	CTZ
Steve Brewer	CTZ
Will Parry-Hiller	NCHFA
Carley Ruff	NCHC
Trey Rabon	AT&T
Dwight Allen	Allen Law Offices
Mary Dalton	ARRA-NC
Todd Barlow	NC Advocates for Justice

MEMBERSHIP LIST
SENATE JUDICIARY II COMMITTEE
2013-2014

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Senator Shirley Randleman, Vice Chair Room 308, LOB 733-5743 Shirley.Randleman@ncleg.net LA: Jeb Kelly	Senator Stan Bingham Room 2117, LB 733-5665 Stan.Bingham@ncleg.net LA: Judy Chriscoe, Maria Kinnaird
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Senator Tommy Tucker Room 311, LOB 733-7659 Tommy.Tucker@ncleg.net LA: Joseph Stansbury	
Staff: Ms. Brenda Carter Research Division 733-2578 Brenda.Carter@ncleg.net	 Mr. Hal Pell Research Division 733-2578 Hal.Pell@ncleg.net
DeAnne Mangum, Committee Assistant Room 300-B, LOB 733-2405 DeAnne.Mangum@ncleg.net	

Senate Committee on Judiciary II
Tuesday, June 10, 2014, 10:00 AM
1124/1224 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 1103	Verification/Jurisdiction in Juvenile Cases.	Representative Stevens
HB 698	Background Checks for Firefighters.	Representative Saine Representative Ramsey Representative Boles Representative Jackson
HB 777	Sex Offender/Expand Residential Restrictions.	
HB 183	Allow Hospitals to Test Blood for DWI.	Representative T. Moore Representative Torbett
HB 618	Amend Firearm Restoration Law.	Representative Speciale Representative Pittman

Presentations

Other Business

Adjournment

Senate Committee on Judiciary II
Tuesday, June 10, 2014 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on June 10, 2014 in Room 1124/1224 of the Legislative Building. Thirteen members were present.

Senator Warren Daniel, Chair, presided.

HB 618 - Amend Firearm Restoration Law

Senator Clark moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Representative Speciale was recognized to explain the PCS. It restores the firearms rights of certain persons who were convicted of nonviolent felonies before December 1, 1995, but were subsequently forfeited because of the enactment of S.L. 1995-487. It increases the $200 fee to petition for the restoration of firearms rights to $250. Also, it would prohibit certain offenses from being eligible for expunction. Hal Pell, committee counsel, was recognized to explain the expunction section. Senator Cook moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 183 - Delay Transfer/Cleveland County Corr. Fac.

Senator Randleman moved to adopt the PCS for discussion and the motion carried. Representative Moore was recognized to explain the bill, which would amend the Session Law that provided for the transfer of the Cleveland County Correctional Facility to the Board of Trustees of Cleveland Community College. It provides for the transfer on July 1, 2016. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 1103 - Verification/Jurisdiction in Juvenile Cases

Representative Stevens was recognized to explain the bill which amends the requirements for judicial review of certain matters at a pre-adjudication hearing in cases under Chapter 7B, the Juvenile Code. Senator Cook moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 777 – Sex Offender/Expand Residential Restrictions

Senator Clark moved to adopt the PCS for discussion and the motion carried. Representative Jackson was recognized to explain the PCS. It would prohibit persons who are required to register as sex offenders from residing within 1,000 feet of a site where a Boys and Girls Club of America is permanently located. Brenda Carter, committee counsel, was recognized to answer questions. Fred Baggett, representing

Police Chiefs, was recognized to speak in favor of the PCS. Senator Bryant moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 698 - Background Checks for Firefighters

Senator Davis moved to adopt the PCS for discussion and the motion carried. Representative Saine was recognized to explain the PCS. It would authorize criminal history checks for current volunteers or paid fire department personnel and emergency medical services personnel. It would also authorize the Secretary of the Department of Public Safety to establish an Urban Search and Rescue Program to be administered by the Division of Emergency Management. Chief Tim Bradley, representing the NC State Firemen's Association, was recognized to answer questions and speak in favor of the PCS. Ms. Carter was recognized to answer questions. Greg Grayson, Greensboro Fire Chief and Senator Meredith were recognized to explain the search and rescue portion of the bill. Senator Bingham moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 10:43 a.m.

Senator Warren Daniel, Chair
Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, June 10, 2014

Senator Daniel,
submits the following with recommendations as to passage:

FAVORABLE

HB **1103** Verification/Jurisdiction in Juvenile Cases.

Draft Number:	None
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Shirley Randleman will handle HB 1103

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, June 10, 2014

Senator Daniel,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **183** **(CS#1)** Allow Hospitals to Test Blood for DWI.

Draft Number:	H183-PCS30775-RK-81
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **618** **(CS#2)** Amend Firearm Restoration Law.

Draft Number:	H618-PCS20186-RK-83
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Senator Warren Daniel will handle HB 183
Senator Warren Daniel will handle HB 618

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Tuesday, June 10, 2014

Senator Daniel,
submits the following with recommendations as to passage:

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

HB **698** Background Checks for Firefighters.

Draft Number:	H698-PCS10577-RV-56
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

HB **777 (CS#1)** Sex Offender/Expand Residential Restrictions.

Draft Number:	H777-PCS10578-RV-57
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Wesley Meredith will handle HB 698
Senator Jeff Jackson will handle HB 777

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 183
Committee Substitute Favorable 3/14/13
Third Edition Engrossed 3/19/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H183-CSRK-81 [v.1]
6/3/2014 4:43:42 PM

Short Title: Delay Transfer/Cleveland County Corr. Fac. (Public)

Sponsors:

Referred to:

March 4, 2013

A BILL TO BE ENTITLED

AN ACT TO DELAY THE TRANSFER DATE OF THE CLEVELAND COUNTY CORRECTIONAL FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2012-177 reads as rewritten:

"**SECTION 4.** Sections 1 through 3 of this act become effective July 1, ~~2014~~ 2016. The remainder of this act becomes effective January 1, 2013."

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

HOUSE BILL 183
Committee Substitute Favorable 3/14/13
Third Edition Engrossed 3/19/13

Short Title: Allow Hospitals to Test Blood for DWI. (Public)

Sponsors:

Referred to:

March 4, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW HOSPITALS TO CONDUCT CHEMICAL ANALYSES OF BLOOD TO DETERMINE A PERSON'S BLOOD ALCOHOL CONCENTRATION OR THE PRESENCE OF ANY OTHER IMPAIRING SUBSTANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

...

(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory ~~approved for chemical analysis by the Department of Health and Human Services,~~employing a chemical analyst authorized by a permit issued by the Department of Health and Human Services to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. As used in this section, the term "laboratory" includes a public or private hospital. Nothing in this section shall be construed to require the Department of Health and Human Services to issue permits for existing hospital facilities or to reinspect existing hospital facilities beyond what is already required by law. The results shall be certified by the ~~person~~analyst who performed the analysis. The ~~provisions of this subsection~~results may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report may be admitted into

evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) **(See note for applicability)** A chemical analysis of blood or urine, to be admissible under this section, shall be performed by ~~a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses.~~a chemical analyst authorized by a permit issued by the Department of Health and Human Services, on the basis of standards consistent with forensic specific requirements for conformance with International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing, to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

...

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance ~~if:~~if the following requirements are met:

(1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person ~~charged; and~~charged.

(2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed by ~~a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses.~~a chemical analyst authorized by a permit issued by the Department of Health and Human Services, on the basis of standards consistent with forensic specific requirements for conformance with International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing, to analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

...."

SECTION 2. This act becomes effective July 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 183:
Delay Transfer/Cleveland County Corr. Fac.

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 9, 2014
Introduced by:	Reps. T. Moore, Torbett	**Prepared by:**	Hal Pell
Analysis of:	PCS to Third Edition H183-CSRK-81		Committee Counsel

SUMMARY: ***This act would amend the Session Law that provided for the transfer of the Cleveland County Correctional Facility to the Board of Trustees of Cleveland Community College.***

CURRENT LAW: Session Law 2012-177 provides for the transfer of the Cleveland County Correctional Facility to the Board of Trustees of Cleveland Community College on July 1, 2014 (effective date of the law)

BILL ANALYSIS: The act would amend the Session Law to provide for the transfer on July 1, 2016 (new effective date).

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

O. Walker Reagan
Director

H183-SMRK-157 CSRK-81 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 618
Committee Substitute Favorable 6/27/13
Committee Substitute #2 Favorable 7/24/13
Fourth Edition Engrossed 7/25/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H618-CSRK-83 [v.3]
6/9/2014 1:58:00 PM

Short Title: Amend Firearm Restoration Law. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE FIREARMS RIGHTS OF CERTAIN PERSONS WHO WERE CONVICTED OF NONVIOLENT FELONIES BEFORE DECEMBER 1, 1995, AND WHOSE FIREARMS RIGHTS HAD BEEN RESTORED BEFORE DECEMBER 1, 1995, TO INCREASE THE FEE TO PETITION FOR THE RESTORATION OF FIREARMS RIGHTS, AND TO ADD TO THE LIST OF OFFENSES INELIGIBLE FOR EXPUNCTION CERTAIN FELONY BREAKING AND ENTERING OFFENSES, AND ANY OFFENSE THAT IS AN ATTEMPT TO COMMIT AN OFFENSE THAT IS NOT ELIGIBLE FOR EXPUNCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.1 is amended by adding a new subsection to read:

"(f) This section does not apply to, there is no disentitlement under this section for, and the firearms rights as defined in 14-415.4 are restored to any person who satisfies all of the following criteria:

(1) The person's firearms rights were restored prior to December 1, 1995, and the forfeiture of the person's firearms rights on December 1, 1995, occurred only because amendments to G.S. 14-415.1, enacted by S.L. 1995-487 and applicable to any person convicted of a felony before December 1, 1995, became effective.

(2) The person's felony convictions prior to December 1, 1995, are only for nonviolent felonies as defined in G.S. 14-415.4.

(3) The person has not been convicted of any subsequent felony on or after December 1, 1995, that would require forfeiture of the person's firearms rights and cause the person to be disentitled under this section."

SECTION 2. G.S. 14-415.4(k) reads as rewritten:

"(k) Fee. – A person who files a petition for restoration of firearms rights under this section shall pay the clerk of court a fee of ~~two hundred dollars ($200.00)~~ two hundred fifty dollars ($250.00) 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."

SECTION 3. G.S. 15A-145.5(a) reads as rewritten:

"(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

(1) A Class A through G felony or a Class A1 misdemeanor.
(2) An offense that includes assault as an essential element of the offense.
(3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
(4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
(5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
(6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
(7) An offense under G.S. 14-401.16.
(7a) An offense under G.S. 14-54(a), 14-54(a1), 14-54.1, 14-55, or 14-56.
(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.
(9) Any offense that is an attempt to commit an offense described in subdivisions (1) through (8) of this subsection."

SECTION 3. Sections 1 and 2 and of this act become effective October 1, 2014. Section 3 of this act becomes effective December 1, 2014, and applies to petitions filed on or after that date, but petitions filed prior to that date are not abated by this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 4

HOUSE BILL 618
Committee Substitute Favorable 6/27/13
Committee Substitute #2 Favorable 7/24/13
Fourth Edition Engrossed 7/25/13

Short Title: Amend Firearm Restoration Law. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE FIREARMS RIGHTS OF CERTAIN PERSONS WHO WERE CONVICTED OF NONVIOLENT FELONIES BEFORE DECEMBER 1, 1995, AND WHOSE FIREARMS RIGHTS HAD BEEN RESTORED BEFORE DECEMBER 1, 1995, AND TO INCREASE THE FEE TO PETITION FOR THE RESTORATION OF FIREARMS RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.1 is amended by adding a new subsection to read:

"(f) This section does not apply to, there is no disentitlement under this section for, and the firearms rights as defined in 14-415.4 are restored to any person who satisfies all of the following criteria:

(1) The person's firearms rights were restored prior to December 1, 1995, and the forfeiture of the person's firearms rights on December 1, 1995, occurred only because amendments to G.S. 14-415.1, enacted by S.L. 1995-487 and applicable to any person convicted of a felony before December 1, 1995, became effective.

(2) The person's felony convictions prior to December 1, 1995, are only for nonviolent felonies as defined in G.S. 14-415.4.

(3) The person has not been convicted of any subsequent felony on or after December 1, 1995, that would require forfeiture of the person's firearms rights and cause the person to be disentitled under this section."

SECTION 2. G.S. 14-415.4(k) reads as rewritten:

"(k) Fee. – A person who files a petition for restoration of firearms rights under this section shall pay the clerk of court a fee of ~~two hundred dollars ($200.00)~~ two hundred fifty dollars ($250.00) 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."

SECTION 3. This act becomes effective October 1, 2013.

HOUSE BILL 618:
Amend Firearm Restoration Law

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 9, 2014
Introduced by:	Reps. Speciale, Pittman	**Prepared by:**	Hal Pell
Analysis of:	PCS to Fourth Edition H618-CSRK-83		Committee Counsel

SUMMARY: ***The PCS to House Bill 618 would restore firearms rights to persons whose rights were restored prior to December 1, 1995, but were subsequently forfeited because of the enactment of S.L. 1995-487; increase the fee for petitioning to restore firearms rights from $200 to $250; and would prohibit certain offenses from being eligible for expunction.***

CURRENT LAW:

Section 1: In 1995, S.L. 1995-487 was enacted and made changes to the firearms statutes in order to comply with the federal Brady Handgun Violence Prevention Act. The Session Law amended G.S. 14-415.1 to prohibit any person who was convicted of a felony in North Carolina before, on, or after December 1, 1995 from possessing a firearm. Consequently, individuals who had their rights restored prior to December 1, 1995, forfeited those rights.

Section 2: The current fee for petitioning for restoration of firearms rights is $200.

Section 3: Under certain circumstances, a person may petition for expunction of nonviolent misdemeanors and felonies. G.S. 15A-145.5(a) lists specific offenses that may not be expunged.

BILL ANALYSIS: The PCS for House Bill 618 does all of the following:

Section 1: Those persons who had their firearms rights restored prior to December 1, 1995, but whose rights were removed by the enactment of S.L. 1995-487, may petition to have their rights restored if:

- The person's felony convictions that occurred prior to December 1, 1995, are only for nonviolent felonies, and
- The person has not been convicted of a subsequent felony on or after December 1, 1995, that would require forfeiture of his or her firearms rights.

Section 2: Raises the fee for petitioning for restoration of firearm rights from $200 to $250.

Section 3: Adds the following crimes to the list of offenses that are not eligible for expunction:

- The felony offense of breaking and entering.
- Breaking and entering a place of worship.
- Preparation to commit a burglary, or breaking and entering, by possession of a dangerous weapon, or a picklock or other implement of housebreaking.
- The felony offense of entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft.
- Any offense that is an attempt to commit an offense that is not eligible for expunction.

EFFECTIVE DATE: Sections 1 and 2 and of this act become effective October 1, 2014. Section 3 of this act becomes effective December 1, 2014, and applies to petitions filed on or after that date, but petitions filed prior to that date are not abated by this act.

H618-smrk-154(CSRK-83)

Shelly DeAdder, Staff Attorney, substantially contributed to this summary.

O. Walker Reagan
Director

H618-SMRK-154 CSRK-83 -V3

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 698
PROPOSED SENATE COMMITTEE SUBSTITUTE H698-CSRV-56 [v.3]

6/9/2014 8:00:28 PM

Short Title: Background Checks for Firefighters. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CRIMINAL HISTORY CHECKS FOR CURRENT VOLUNTEERS OR PAID FIRE DEPARTMENT PERSONNEL AND EMERGENCY MEDICAL SERVICES PERSONNEL, AND TO ESTABLISH THE URBAN SEARCH AND RESCUE PROGRAM AND THE URBAN SEARCH AND RESCUE TEAM ADVISORY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.12 reads as rewritten:

"**§ 114-19.12. Criminal history record checks of applicants to and current members of fire departments and emergency medical services.**

(a) Definitions. – The following definitions apply in this section:

...

(3) Current member. – A person who serves in a paid or volunteer position with a fire department or an emergency medical service.

(b) When requested by a designated local Homeland Security director a local fire ~~chief,~~ chief of a rated fire department, a county fire marshal, or an emergency services director or, when there is no designated local Homeland Security director, local fire ~~chief,~~ chief of a rated fire department, county fire marshal, or emergency services director, by a local law enforcement agency, the North Carolina Department of Justice may provide to the requesting director, chief, marshal, director, or agency an applicant's or current member's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security director, local fire chief, marshal, director, or local law enforcement agency shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, any additional information required by the Department of Justice, and a form signed by the applicant to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

...

(d) If the applicant's or current member's verified criminal history record check reveals one or more convictions covered under subdivision (a)(2) of this section, then the conviction shall constitute just cause for not selecting the applicant for the position or for dismissing the ~~person~~ current member from a current position with the local fire department or emergency medical services. The conviction shall not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency in determining whether the position shall be ~~denied:~~denied or the current member dismissed from a current position:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and the duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The local fire department or emergency medical services may deny the applicant or current member the position or dismiss an applicant or current member who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from ~~the~~ a current position.

....

(g) For purposes of this section, "local fire chief" shall include ~~only fire chiefs who are paid employees of a city;~~ the fire chief of any bona fide fire department certified to the Commissioner of Insurance with at least a Class 9S rating for insurance grading purposes; "county fire marshal" shall include only fire marshals who are paid employees of a county; and "emergency services director" shall include only emergency services directors who are paid employees of a city or county."

SECTION 2. The Joint Legislative Oversight Committee on Justice and Public Safety shall study the feasibility of having the Department of Insurance, under the direction of the North Carolina Fire and Rescue Commission, to provide the request for the criminal check and any required identifying information to the Department of Justice. The Committee shall report its findings to the 2015 General Assembly upon its convening.

SECTION 3. G.S. 166A-19.12 reads as rewritten:

"**§ 166A-19.12. Powers of the Division of Emergency Management.**

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Public Safety:

...

(21) Maintenance of an effective Statewide urban search and rescue program."

SECTION 4. Chapter 166A of the General Statutes is amended by adding a new Article to read:

"Article 6.
"Urban Search and Rescue.

"**§ 166A-65. Definitions.**

The following definitions apply in this Article:

(1) Urban search and rescue team. – A specialized team or group of teams, organized with capabilities equivalent to urban search and rescue teams established under the Federal Emergency Management Agency in order to

Tim Bradley -

assist in the removal of trapped victims during emergencies, including, but not limited to, collapsed structures, trench excavations, elevated locations, and in other technical rescue situations.

(2) Specialty rescue team. – A specialized response team, organized to provide technical rescue assistance to first responders. The term includes, but is not limited to, a canine search and rescue or disaster response team, a cave search and rescue team, a collapse search and rescue team, a mine and tunnel search and rescue team, and a swift water or flood search and rescue team. A specialty rescue team shall be aligned with one or more of the search and rescue categories within the Federal Emergency Management Agency's national resource typing system.

(3) Incident support team. – A team of trained emergency response personnel, organized to provide coordination between governmental agencies and nongovernmental organizations as well as technical and logistical support to urban search and rescue teams and specialty rescue teams.

(4) Contract response team. – An urban search and rescue team, specialty rescue team, or incident support team.

(5) Secretary. – The Secretary of the Department of Public Safety.

"**§ 166A-66. Urban Search and Rescue Program.**

(a) The Secretary shall adopt rules establishing a program for urban search and rescue that relies on contracts with contract response teams. The program shall be administered by the Division of Emergency Management. To the extent possible, the program shall be coordinated with other emergency planning activities of the State. The program shall include contract response teams located strategically across the State that are available to provide 24-hour dispatch from the Division of Emergency Management Operations Center. The rules for the program shall include:

(1) Standards, including training, equipment, and personnel standards required to operate a contract response team.

(2) Guidelines for the dispatch of a contract response team to an urban search and rescue team or specialty rescue team mission.

(3) Guidelines for the on-site operations of a contract response team.

(4) Standards for administration of a contract response team, including procedures for reimbursement of response costs.

(5) Refresher and specialist training for members of contract response teams.

(6) Procedures for recovering the costs of an urban search and rescue team or specialty rescue team mission.

(7) Procedures for bidding and contracting for urban search and rescue team and specialty rescue team missions.

(8) Criteria for evaluating bids for urban search and rescue team and specialty rescue team missions.

(9) Delineation of the roles of the contract response team, local public safety personnel, the Division of Emergency Management's area coordinator, and other State agency personnel participating in an urban search and rescue team or specialty rescue team mission.

(10) Procedures for the Division of Emergency Management to audit the contract response teams to ensure compliance with State and federal guidelines.

(b) Within available appropriations, the Division of Emergency Management shall spend the necessary funds for training, equipment, and other items necessary to support the operations of contract response teams. The Division of Emergency Management may also administer any grants of other funds made available for contract response teams, in accordance with applicable rules and regulations approved by the Director of the State Budget.

(c) In developing the Urban Search and Rescue Program and adopting the rules required by this section, the Secretary shall consult with the Urban Search and Rescue Team Advisory Committee established pursuant to G.S. 166A-69.

"**§ 166A-67. Contracts; equipment loans.**

(a) The Secretary may contract with any unit or units of local government for the provision of a contract response team to implement the Urban Search and Rescue Program. Contracts are to be let consistent with the bidding and contract standards and procedures adopted pursuant to G.S. 166A-66(a)(7) and G.S. 166A-66(a)(8). In entering into contracts with units of local government, the Secretary may agree to provide any of the following:

(1) A loan of equipment.

(2) Reimbursement of personnel costs, including the cost of callback personnel, when a contract response team is authorized by the Department to respond to urban search and rescue team and specialty rescue team missions.

(3) Reimbursement for use of equipment and vehicles owned by the contract response team.

(4) Replacement of disposable materials and damaged equipment.

(5) Training expenses.

(6) Anything else agreed to by the Secretary and the contract response team.

(b) The Secretary shall not agree to provide reimbursement for standby time.

(c) Any contract entered into between the Secretary and a unit of local government for the provision of a contract response team shall specify that the members of the contract response team, when performing under the contract, shall not be employees of the State and shall not be entitled to benefits under the Teachers' and State Employees' Retirement System or for the payment by the State of federal Social Security, employment insurance, or workers' compensation.

(d) Contract response teams that have the use of a State vehicle may use the vehicle for local purposes. Where a State vehicle is used for purposes other than authorized contract response to an urban search and rescue team and specialty rescue team mission, the contract response team shall be liable for repairs or replacements directly attributable to that use.

"**§ 166A-68. Immunity of contract response team personnel.**

Members of a contract response team shall be protected from liability under the provisions of G.S. 166A-19.60(a) while on an urban search and rescue team or specialty rescue team mission pursuant to authorization from the Division of Emergency Management.

"**§ 166A-69. Urban Search and Rescue Team Advisory Committee.**

(a) The Urban Search and Rescue Team Advisory Committee is created. The Secretary shall appoint the members of the Committee and shall designate the Director or Deputy Director of the North Carolina Division of Emergency Management as the chair. In making appointments, the Secretary shall take into consideration the expertise of the appointees in the management of urban search and rescue or specialty response team missions. The Secretary shall appoint one representative from each of the following:

(1) The Division of North Carolina Emergency Management, who shall be the Director or Deputy Director of the North Carolina Division of Emergency Management and who shall serve as the chair.

(2) Each state USAR regional contract response team's Chief or Deputy Chief.

(3) The North Carolina Office of State Fire Marshal.

(4) The North Carolina Highway Patrol.

(5) The North Carolina National Guard.

(6) The North Carolina Association of Rescue and E.M.S., Inc.

(7) The North Carolina Association of Fire Chiefs.

(8) The North Carolina State Firemen's Association.

(9) The North Carolina Emergency Management Association.

(b) The Advisory Committee shall meet on the call of the chair, or at the request of the Secretary, provided that the Committee shall meet no less than once every year. The Department of Public Safety shall provide space for the Advisory Committee to meet. The Department shall also provide the Advisory Committee with necessary support staff and supplies to enable the Committee to carry out its duties in an effective manner.

(c) Members of the Advisory Committee shall serve without pay, but shall receive travel allowance, lodging, subsistence, and per diem as provided by G.S. 138-5.

(d) The Contract Response Team Advisory Committee shall advise the Secretary on the establishment of the Urban Search and Rescue Program. The Committee shall also evaluate and advise the Secretary of the need for additional contract response teams to serve the State."

SECTION 5. Section 1 of this act becomes effective October 1, 2014. Section 4 of this act becomes effective July 1, 2014. The remainder of this act is effective when it becomes law.

HOUSE BILL 698

Short Title:	Background Checks for Firefighters.	(Public)
Sponsors:	Representatives Saine, Ramsey, and Boles (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee A.	

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CRIMINAL HISTORY CHECKS FOR CURRENT VOLUNTEERS OR PAID FIRE DEPARTMENT PERSONNEL AND EMERGENCY MEDICAL SERVICES PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.12 reads as rewritten:

"**§ 114-19.12. Criminal history record checks of applicants to and current members of fire departments and emergency medical services.**

(a) Definitions. – The following definitions apply in this section:

...

(3) Current member. – A person who serves in a paid or volunteer position with a fire department or an emergency medical service.

(b) When requested by a designated local Homeland Security director a local fire chief, a county fire marshal, or an emergency services director or, when there is no designated local Homeland Security director, local fire chief, county fire marshal, or emergency services director, by a local law enforcement agency, the North Carolina Department of Justice may provide to the requesting director, chief, marshal, director, or agency an applicant's or current member's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security director, local fire chief, marshal, director, or local law enforcement agency shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, any additional information required by the Department of Justice, and a form signed by the applicant to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

...

(d) If the applicant's or current member's verified criminal history record check reveals one or more convictions covered under subdivision (a)(2) of this section, then the conviction shall constitute just cause for not selecting the applicant for the position or for dismissing the

~~person~~ current member from a current position with the local fire department or emergency medical services. The conviction shall not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency in determining whether the position shall be ~~denied:~~denied or the current member dismissed from a current position:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and the duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The local fire department or emergency medical services may deny the applicant or current member the position or dismiss an applicant or current member who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from ~~the~~ a current position.

...."

SECTION 2. This act becomes effective October 1, 2013.

HOUSE BILL 698:
Background Checks for Firefighters

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 9, 2014
Introduced by:	Reps. Saine, Ramsey, Boles	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition H698-CSRV-56		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 698 would authorize criminal history checks for current volunteers or paid fire department personnel and emergency medical services personnel. It would also authorize the Secretary of the Department of Public Safety to establish an Urban Search and Rescue Program to be administered by the Division of Emergency Management.***

BILL ANALYSIS: Current law authorizes a criminal history check for applicants for volunteer or paid positions with a fire department or emergency medical service. **Sections 1 and 2** of the bill would authorize criminal history checks for current volunteers or paid fire department personnel and emergency services personnel, and direct the Joint Legislative Oversight Committee on Justice and Public Safety to study the feasibility of having the Department of Insurance, under the direction of the NC Fire and Rescue Commission, to request the criminal checks and to supply any required identifying information to the Department of Justice.

Sections 3 and 4 of the bill would make the Division of Emergency Management responsible for maintenance of an effective Statewide urban search and rescue program, establish statutory standards for the program, and authorize the Secretary of Public Safety to contract with units of local government for the provision of contract response teams that would be located strategically across the State to provide 24-hour dispatch from the Division of Emergency Management Operations Center. Contract response teams would assist in the removal of trapped victims during emergencies, including collapsed structures, trench excavations, elevated locations, and other technical rescue situations. Within available appropriations, the Division of Emergency Management would be directed to spend the necessary funds for training, equipment, and other items needed support the operations of contract response teams.

The bill creates the Urban Search and Rescue Team Advisory Team Committee to advise the Secretary of Public Safety on the establishment of the urban search and rescue program. Members of the Advisory Committee would be appointed by the Secretary of Public Safety, and the Committee would be chaired by the Director or Deputy Director of the Division on Emergency Management.

EFFECTIVE DATE: Section 1 of the bill, pertaining to criminal record checks, would become effective October 1, 2014. Section 4 of the bill, establishing the Urban Search and Rescue Program, would become effective July 1, 2014. The remainder of the bill would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 777
Committee Substitute Favorable 5/14/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H777-CSRV-57 [v.1]
6/9/2014 8:46:01 PM

Short Title: Sex Offender/Expand Residential Restrictions. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW THAT IMPOSES RESIDENTIAL RESTRICTIONS ON SEX OFFENDERS TO PROVIDE THAT A SEX OFFENDER IS PROHIBITED FROM RESIDING WITHIN ONE THOUSAND FEET OF A SITE WHERE A BOYS AND GIRLS CLUB OF AMERICA IS LOCATED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.16(b) reads as rewritten:

"(b) As used in this section, "school" does not include home schools as defined in G.S. 115C-563 or institutions of higher ~~education, and the~~ education. The term "child care center" is defined by ~~G.S. 110-86(3).~~ G.S. 110-86(3); however, for purposes of this section the term "child care center" does include the permanent locations of organized clubs of Boys and Girls Clubs of America. The term "registrant" means a person who is registered, or is required to register, under this Article."

SECTION 2. This act becomes effective December 1, 2014, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 777
Committee Substitute Favorable 5/14/13

Short Title: Sex Offender/Expand Residential Restrictions. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW THAT IMPOSES RESIDENTIAL RESTRICTIONS ON SEX OFFENDERS TO PROVIDE THAT A SEX OFFENDER IS PROHIBITED FROM RESIDING WITHIN ONE THOUSAND FEET OF A SITE WHERE A BOYS AND GIRLS CLUB OF AMERICA IS LOCATED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.16(b) reads as rewritten:

"(b) As used in this section, "school" does not include home schools as defined in G.S. 115C-563 or institutions of higher ~~education, and the~~ education. The term "child care center" is defined by ~~G.S. 110-86(3).~~ G.S. 110-86(3) provided, however, that for purposes of this section the term "child care center" does include the permanent locations of organized clubs of Boys and Girls Clubs of America. The term "registrant" means a person who is registered, or is required to register, under this Article."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 777:
Sex Offender/Expand Residential Restrictions

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 9, 2014
Introduced by:	Rep. Jackson	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to Second Edition H777-CSRV-57		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 777 would prohibit persons who are required to register as sex offenders from residing within 1,000 feet of a site where a Boys and Girls Club of America is permanently located.

CURRENT LAW: G.S. 14-208.16 prohibits a person required to register as a sex offender from knowingly residing within 1,000 feet of the property on which any public or nonpublic school or child care center is located. The residential restriction applies to any registrant who did not establish his or her residence prior to August 16, 2006. Violation of the residential restriction is a Class G felony.

BILL ANALYSIS: The bill would amend the residential restriction that prohibits a person required to register as a sex offender from residing within 1,000 feet of a site where a school or child care center is located. The bill specifies that for purposes of the residential restriction in G.S. 14-208.16, child care centers include permanent locations of organized clubs of Boys and Girls Clubs of America.

EFFECTIVE DATE: The bill would become effective December 1, 2014 and apply to offenses committed on or after that date.

O. Walker Reagan
Director

H777-SMRV-155 CSRV-57 -V1

Research Division
(919) 733-2578

HOUSE BILL 1103*

Short Title:	Verification/Jurisdiction in Juvenile Cases.	(Public)
Sponsors:	Representative Stevens (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee C.	

May 19, 2014

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE COURT TO CONSIDER WHETHER A JUVENILE PETITION HAS BEEN PROPERLY VERIFIED AND JURISDICTION HAS BEEN INVOKED AT THE PRE-ADJUDICATION HEARING, AS RECOMMENDED BY THE LRC COMMITTEE ON OMNIBUS FOSTER CARE AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-800.1 reads as rewritten:

"**§ 7B-800.1. Pre-adjudication hearing.**

(a) Prior to the adjudicatory hearing, the court shall consider the following:

(1) Retention or release of provisional counsel.

(2) Identification of the parties to the proceeding.

(3) Whether paternity has been established or efforts made to establish paternity, including the identity and location of any missing parent.

(4) Whether relatives have been identified and notified as potential resources for placement or support.

(5) Whether all summons, service of process, and notice requirements have been met.

(5a) Whether the petition has been properly verified and invokes jurisdiction.

(6) Any pretrial motions, including (i) appointment of a guardian ad litem in accordance with G.S. 7B-602, (ii) discovery motions in accordance with G.S. 7B-700, (iii) amendment of the petition in accordance with G.S. 7B-800, or (iv) any motion for a continuance of the adjudicatory hearing in accordance with G.S. 7B-803.

(7) Any other issue that can be properly addressed as a preliminary matter.

(b) The pre-adjudication hearing may be combined with a hearing on the need for nonsecure custody or any pretrial hearing or conducted in accordance with local rules.

(c) The parties may enter stipulations in accordance with G.S. 7B-807 or enter a consent order in accordance with G.S. 7B-801."

SECTION 2. This act becomes effective October 1, 2014.

HOUSE BILL 1103:
Verification/Jurisdiction in Juvenile Cases

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 9, 2014
Introduced by:	Rep. Stevens	**Prepared by:**	Hal Pell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act amends the requirements for judicial review of certain matters at a pre-adjudication hearing in cases under Chapter 7B, the Juvenile Code. This act becomes effective October 1, 2014.***

[As introduced, this bill was identical to S821, as introduced by Sens. Randleman, Barringer, which is currently in Senate Judiciary II.]

CURRENT LAW:

In the 2013 General Session, the General Assembly enacted a new statute, G.S. 7B-800.1, to provide for judicial review of matters prior to an adjudicatory hearing in juvenile cases. The statute requires the court is required to consider pretrial motions and several other matters in relation to the proceedings.

BILL ANALYSIS:

This act would amend G.S. 7B-800.1 to add a requirement that the court consider whether the petition seeking adjudication that a juvenile is abused, neglected, or dependent has been properly verified and invokes jurisdiction. A petition initiating a case alleging that a juvenile is abused, neglected, or dependent must be properly signed and verified. G.S. 7B-403(a). Absent proper signature and verification, the proceedings are void *ab initio* and the court is without subject matter jurisdiction. *In the Matter of T.R.P.*, 360 N.C. 588 (2006). Consequently, any judgments entered are void and without legal effect.

EFFECTIVE DATE: This act becomes effective October 1, 2014.

SENATE SERGEANT-AT-ARMS

COMMITTEE: Senate Committee on Judiciary II

DATE: 06-10-2014 **ROOM:** 1124

1. STEVE McKAIG
2. ISAAC WALKER
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

Chris Allran & Daniel

SENATE PAGES ATTENDING

COMMITTEE: Judiciary II **ROOM:** 1124

DATE: 6-10 **TIME:** 10 am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Deirdre Logan	Durham	McKissick
2. Ariana Nicholson	Durham	McKissick
3. Sean ~~Kurz~~	Raleigh	Stein
4. Sarah Womack	Sanford	Rabin
5. Mackin Boylan	Raleigh	Hunt
6. Robert Edwards	Charlotte	Jenkins
7. Cadeala Troublefield	Troy	Bingham
8. Andrew Boylan Baddy	Chapel Hill	Berger
9. Matthew Stevens	Cornelius	Ford
10. Laura Payne	Lexington	Bingham

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

Senate Judiciary II Committee — June 10, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
M. Smallwood	SOG
M. Daniel	NCCASA
M Chappell	NCCASA
Jim Harrell	BTA
Fred Bosse	Bosse & Associates.
JOHN FRALEY	REP. ELECT - DISTRICT 95
R Zach Wallace	Rep T. Moore
Todd Barlow	NCAJ
Launa Spratley	NCGIA - Rep. Ross

VISITOR REGISTRATION SHEET

Senate Judiciary II Committee — June 10, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sara Salisbury	NCDOJ
Cameron Bowen	NCGA
David Anders	PFFNC
Hazel Speciale	LA for Speciale
Mike Chun	NC State AFLCIO
Susanna Davis	WM
Melissa O'Dair	Intern
Christopher Greenidge	Intern
Amy Basson	NCACC
Chris A. Nichols	Chris A. Nichols PLLC
Deb Clary	NCSP

VISITOR REGISTRATION SHEET

Senate Judiciary II Committee
Name of Committee

June 12, 2014
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Harris	7352 Red Fox Rd, Bailey NC, 27807
Fred Baggett	Police Chiefs
Deborah Hughes	KLG
Debbie Jones	NCDMV
JOHN M. GANT II	RALEIGH FIRE DEPT.
Eric Griffin	Greenville Fire/Rescue
JOHN M. LAWRENCE	CHAPEL HILL FIRE DEPT. NCTFO
Tim Bradley	NC SFA
Greg Grayson	Greensboro Fire Dept.
Brendan Burns	NCGA
Grason McLissick	NCGA

Senate Committee on Judiciary II
Tuesday, June 19, 2014 at 10:00 AM
Room 1124/1224 of the Legislative Building

MINUTES

The Senate Committee on Judiciary II met at 10:00 AM on June 19, 2014 in Room 1124/1224 of the Legislative Building. Twelve members were present.

Senator Austin Allran, Chair, presided.

HB 366 – Forest Service Tech./Clarify'g Changes - AB

Senator Clark moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Senator Brock was recognized to explain the PCS, which maintains the confidentiality of environmental investigations for agricultural operations and directs the Department of Environment and Natural Resources (DENR) to adopt rules for a formal complaint procedure. It clarifies the authority of local governments to adopt ordinances related to fertilizer. It authorizes a study of the State's participation in the Commercial Vehicle Safety Alliance North American Standard Inspection Program. It also clarifies the meaning of the terms of "planting and harvesting season" and "planting and harvesting period" for purposes of applying federal laws or regulations relating to hours of service rules for certain drivers transporting agricultural products. It amends the chairmanship of the Agriculture and Forestry Awareness Study Commission. It allows the Commissioner of Agriculture to appoint law enforcement officers to carry out the law enforcement responsibilities of the Department of Agriculture and Consumer Services. It classifies trespassing on an agricultural facility as a first degree trespass. It requires written consent to operate an all terrain vehicle on property owned by another and it allows drainage districts to maintain ditches in buffer zones. Senator Cook moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 189 – Amend Info Prov./Noncust. Parent/Child Supp.

Senator Randleman moved to adopt the PCS for discussion and the motion carried. Representative Stevens was recognized to explain the PCS which would require that the address of the custodial parent or child be included in a child support order except under certain circumstances. Senator Daniel offered a technical amendment changing the effective date and moved for its adoption. The motion carried. Senator Bryant moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 1027 – DWI Interlock Violation/DMV Hearing Site

Representative Jackson was recognized to explain the bill, which is a recommendation of the Joint Legislative Transportation Oversight Committee. It provides for DMV

interlock violation hearings to be conducted in the county where the person resides rather than the county where the charge is brought. Senator Bingham moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 10:33 a.m.

Senator Austin Allran, Chair
Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 19, 2014	10:00 AM	1124/1224 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 189	Amend Info Prov./Noncust. Parent/Child Supp.	Representative Glazier Representative Stevens Representative L. Hall
HB 366	Forest Service Tech./Clarify'g Changes-AB	Representative Langdon Representative Dixon Representative Brisson Representative S. Martin
HB 1027	DWI Interlock Violation/DMV Hearing Site.	Representative Torbett

Senator Austin M. Allran, Co-Chair
Senator Warren Daniel, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Monday, June 23, 2014

Senator Allran,
submits the following with recommendations as to passage:

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

HB **1027** DWI Interlock Violation/DMV Hearing Site.

Draft Number:	H1027-PCS40258-RV-61
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **366 (CS#1)** Forest Service Tech./Clarifyg Changes-AB

Draft Number:	H366-PCS40261-TQ-81
Sequential Referral:	Agriculture/Environment/Natural Resources
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Senator Warren Daniel will handle HB 1027
Senator Andrew Brock will handle HB 366

CMR1090-V-1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Allran, Co-Chair
Senator Daniel, Co-Chair

Thursday, June 19, 2014

Senator Allran,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **189** **(CS#1)** Amend Info Prov./Noncust. Parent/Child Supp.

Draft Number:	H189-PCS30781-RK-87
Sequential Referral:	Health Care
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Shirley Randleman will handle HB 189

CMR1081-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 189
Committee Substitute Favorable 3/18/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H189-PCS30781-RK-87

Short Title: Amend Info./Child Supp. Orders. (Public)

Sponsors:

Referred to:

March 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING INFORMATION PROVIDED TO NONCUSTODIAL PARENTS SUBJECT TO WAGE WITHHOLDING ORDERS UNDER THE LAWS PERTAINING TO CHILD SUPPORT, AND TO MAKE TECHNICAL CORRECTIONS TO THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-136.3(a) reads as rewritten:

"(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order ~~shall:~~shall comply with each of the following:

(1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing ~~address;~~address.

(2),(2a) Repealed by Session Laws 1993, c. 517, s. 1.

(3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable ~~income;~~income.

(4) Require the custodial party to keep the obligor informed of ~~(i)~~ the custodial party's disposable income and the amount and effective date of any substantial change in this disposable ~~income and (ii)~~ income.

(4a) Include the current residence and mailing address of the ~~child, unless~~ custodial parent, or the address of the child if the address of the custodial parent and the address of the child are different. However, there is no requirement that the child support order contain the address of the custodial parent or the child if (i) there is an existing order prohibiting disclosure of the custodial parent's or child's address to the obligor or (ii) the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B of the General ~~Statutes; and~~Statutes.

(5) Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income."

SECTION 2. G.S. 50A-370(a) reads as rewritten:

"(a) After a deploying parent receives notice of deployment and during the deployment, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 521-522. A court may not issue a permanent order granting custodial responsibility in the absence of the deploying parent without the consent of the deploying parent."

SECTION 3. G.S. 50A-379(a) reads as rewritten:

"(a) Except for an order in accordance with G.S. 50A-373 or as otherwise provided in subsection (b) of this section, and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 521-522, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate a grant of caretaking authority, decision-making authority, or limited contact made pursuant to this Article if the modification or termination is consistent with this Part and the court finds it is in the best interest of the child. Any modification shall be temporary and terminates following the conclusion of deployment of the deployed parent according to the procedures under Part 4 of this Article, unless the grant has been terminated before that time by court order."

SECTION 4. G.S. 50A-385(c) reads as rewritten:

"(c) In the absence of an agreement to terminate, the temporary agreement granting custodial responsibility terminates 60 days from the date ~~of one of the following:~~

~~(1) The date the deploying parent gives notice to the other parent that the deploying parent has returned from deployment.~~

~~(2) The date stated in an order terminating the temporary grant of custodial responsibility.~~

~~(3) The death of the deploying parent.~~the deploying parent gives notice to the other parent that the deploying parent has returned from deployment, unless earlier terminated upon the date stated in an order terminating the temporary grant of custodial responsibility or the death of the deploying parent."

SECTION 5. G.S. 50A-388(a) reads as rewritten:

"(a) A temporary order for custodial responsibility issued under Part 3 of this Article shall terminate, if no agreement between the parties to terminate a temporary order for custodial responsibility has been filed, 60 days from ~~(i)~~ the date the deploying parent gives notice of having returned from deployment to the other parent ~~or~~ and any nonparent granted custodial ~~responsibility~~ responsibility, when applicable, or ~~(ii)~~ upon the death of the deploying ~~parent.~~parent, whichever occurs first."

SECTION 6. Section 1 of this act becomes effective October 1, 2014, and applies to orders entered on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 189:
Amend Info Prov./Noncust. Parent/Child Supp

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 18, 2014
Introduced by:	Reps. Glazier, Stevens, L. Hall	**Prepared by:**	Hal Pell Committee Counsel
Analysis of:	PCS to Second Edition H189-CSRK-87		

SUMMARY: ***This act would require that the address of the custodial parent or child be included in a child support order except under certain circumstances.***

CURRENT LAW: A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order must have a provision that requires the custodial party to keep the obligor informed of the child's address. There is no requirement if the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B, North Carolina General Statutes.

BILL ANALYSIS:

Section 1: The act amends the law to require that the custodial parent's address is in the order. If the custodial parent and the child are at different addresses, the child's address is to be in the order. The order does not have to contain the address if (i) there is an existing order prohibiting disclosure of the custodial parent's or child's address to the obligor or (ii) the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B, North Carolina General Statutes.

Sections 2 – 5: Technical amendments to the Uniform Deployed Parents Custody and Visitation Act.

EFFECTIVE DATE: Section 1 of this act becomes effective October 1, 2014, and applies to orders entered on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 189
Committee Substitute Favorable 3/18/13

Short Title: Amend Info Prov./Noncust. Parent/Child Supp. (Public)

Sponsors:

Referred to:

March 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING INFORMATION PROVIDED TO NONCUSTODIAL PARENTS SUBJECT TO WAGE WITHHOLDING ORDERS UNDER THE LAWS PERTAINING TO CHILD SUPPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-136.3(a) reads as rewritten:

"(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order ~~shall:~~shall comply with each of the following:

(1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing ~~address;~~address.

(2), (2a) Repealed by Session Laws 1993, c. 517, s. 1.

(3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable ~~income;~~income.

(4) Require the custodial party to keep the obligor informed of ~~(i)~~ the custodial party's disposable income and the amount and effective date of any substantial change in this disposable ~~income and (ii)~~income.

(4a) Require the North Carolina Child Support Enforcement agency to provide, or to allow the obligor to obtain through the N.C. Child Support Centralized Collections database, the current residence address and mailing address of the custodial party, or the current residence address and mailing address of the child if the address of the custodial party and the address of the child are different. A form approved by the Administrative Office of the Courts shall be supplied by the clerk of court to an obligor to enable the obligor to proceed pro se pursuant to this subsection. However, there is no requirement that the court authorize the obligor to have access to the current residence and mailing address of the custodial party or the child, ~~unless~~ if:

a. There is an existing order prohibiting disclosure of the address to the obligor.

b. The ~~the~~ court has determined that ~~notice~~ providing the address to the obligor is inappropriate because the obligor has made verbal or

physical threats that constitute domestic violence under Chapter 50B of the General ~~Statutes; and~~Statutes.

c. The child is in foster care, protective custody, or a court-ordered placement under Chapter 7B of the General Statutes.

d. Disclosure of the address is otherwise prohibited by State or federal law.

(5) Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 366
Committee Substitute Favorable 4/3/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H366-CSTQ-81 [v.5]
6/18/2014 9:14:07 PM

Short Title: NC Farm Act of 2014. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) MAINTAIN THE CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A FORMAL COMPLAINT PROCEDURE; (2) CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT ORDINANCES RELATED TO FERTILIZER; (3) STUDY THE STATE'S PARTICIPATION IN THE COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION PROGRAM; (4) CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL PRODUCTS; (5) AMEND THE CHAIRMANSHIP OF THE AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION; (6) ALLOW THE COMMISSIONER OF AGRICULTURE TO APPOINT LAW ENFORCEMENT OFFICERS TO CARRY OUT THE LAW ENFORCEMENT RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; (7) CLASSIFY TRESPASSING ON AN AGRICULTURAL FACILITY AS A FIRST DEGREE TRESPASS; (8) REQUIRE WRITTEN CONSENT TO OPERATE AN ALL TERRAIN VEHICLE ON PROPERTY OWNED BY ANOTHER; AND (9) ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES.

The General Assembly of North Carolina enacts:

MAINTAIN CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A FORMAL COMPLAINT PROCEDURE

SECTION 1.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"**§ 143-215.9D. Agricultural operation investigations confidential.**

Complaints of violations of this Article relating to an agricultural operation and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the Department from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis

in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

"**§ 143-215.9E. Initial consideration of complaint.**

(a) When a complaint alleging a violation of this Article is filed with the Department, the Department may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(b) The Department may decline to accept or further investigate a complaint about an agricultural operation if, after an initial assessment of the complaint, the Department finds reasonable grounds to believe that the complaint is frivolous or was filed in bad faith."

SECTION 1.(b) The Department of Environment and Natural Resources shall adopt rules developing a system for receiving, investigating, and responding to environmental complaints about agricultural operations, in accordance with Article 2A of Chapter 150B of the General Statutes, the Administrative Procedure Act.

AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT ORDINANCES RELATED TO FERTILIZER

SECTION 2. Article 56 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-678. Authority to regulate fertilizers.**

No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environment and Natural Resources or the Environmental Management Commission to enforce water quality standards. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from adopting ordinances regulating fertilizers to protect water quality, provided that the ordinances have been approved by the Environmental Management Commission or the Department of Environment and Natural Resources as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality as established by the Environmental Management Commission under Part 1, Article 21 of Chapter 143 of the General Statutes. Nothing in this section shall prohibit a county or city from exercising its authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to G.S. 153A-128 or G.S. 160A-183."

STUDY PARTICIPATION IN THE COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION PROGRAM

SECTION 3. The Department of Public Safety shall study the State's participation in the Commercial Vehicle Safety Alliance North American Standard Inspection Program for roadside commercial vehicle safety inspections. The study shall include (i) a history of when North Carolina joined the program; (ii) an explanation of how the program is currently being implemented; (iii) data on how many safety inspection decals are issued annually; and (iv) a geographic analysis of where safety inspection decals are issued within the State. The Department shall report the results of its study to the Agriculture and Forestry Awareness Study Commission on or before November 1, 2014.

CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF

APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL PRODUCTS

SECTION 4. G.S. 20-381 is amended by adding a new subsection to read:

"**§ 20-381. Specific powers and duties of Department of Public Safety applicable to motor carriers; agricultural exemption.**

...

(c) For purposes of 49 C.F.R. § 395.1(k) and any other federal law or regulation relating to hours-of-service rules for drivers engaged in the transportation of agricultural commodities and farm supplies for agricultural purposes, the terms "planting and harvesting season" and "planting and harvesting period" refer to the period from January 1 through December 31 of each year."

AMEND CHAIRMANSHIP OF AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION

SECTION 5. G.S. 120-150 reads as rewritten:

"**§ 120-150. Creation; appointment of members.**

There is created an Agriculture and Forestry Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture and forestry sectors of the State's economy. Members shall be as follows:

(1) Three appointed by the Governor.
(2) Three appointed by the President Pro Tempore of the Senate.
(3) Three appointed by the Speaker of the House.
(4) ~~The chairs of the House Agriculture Committee.~~Two members of the House of Representatives appointed by the Speaker of the House.
(5) ~~The chairs of the Senate Committee on Agriculture, Environment, and Natural Resources.~~Two members of the Senate appointed by the President Pro Tempore of the Senate.
(6) The Commissioner of Agriculture or the Commissioner's designee.
(7) A member of the Board of Agriculture designated by the chair of the Board of Agriculture.
(8) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(9) The President of the North Carolina State Grange or the President's designee.
(10) The Secretary of Environment and Natural Resources or the Secretary's designee.
(11) The President of the North Carolina Forestry Association, Inc., or the President's designee.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. ~~The Chairs of the House Agriculture Committee and the Chairs of the Senate Committee on Agriculture, Environment, and Natural Resources shall serve as cochairs."~~ The President Pro Tempore of the Senate and the Speaker of the House shall each designate two members to serve as cochairs of the Commission."

ALLOW COMMISSIONER OF AGRICULTURE TO APPOINT LAW ENFORCEMENT OFFICERS TO CARRY OUT LAW ENFORCEMENT RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE

SECTION 6. G.S. 106-900 reads as rewritten:

"**§ 106-900. Powers of ~~forest~~Department of Agriculture and Consumer Services law-enforcement officers.**

The Commissioner is authorized to appoint as many ~~forest~~Department of Agriculture and Consumer Services law-enforcement officers as he or she deems necessary to ~~carry out the forest law-enforcement responsibilities of the Department~~ investigate and enforce any violation of the laws within the authority of the Department or which occur on Department property. Such officers shall meet the requirements of Chapter 17C of the General Statutes and shall take the oath of office prescribed by Article VI, Section 7 of the Constitution. ~~Forest law-enforcement officers shall~~ Of these officers, the Commissioner may designate certain officers to also have ~~all~~ the powers and the duties of a forest ranger enumerated in G.S. 106-898 and G.S. 106-899 and the power to enforce the forest laws. ~~Forest law-enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest~~ A Department law-enforcement officer may arrest, without warrant, any person or persons committing any crime in ~~his~~ the officer's presence or ~~whom~~who such officer has probable cause for believing has committed a crime in ~~his~~the officer's presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. ~~Forest~~ Department law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department.

ADD AGRICULTURAL FACILITIES TO FIRST DEGREE TRESPASS

SECTION 7.(a) G.S. 14-159.12(c)(1) is amended by adding a new sub-subdivision to read:

"

§ 14-159.12. First degree trespass.

...

(c) Except as otherwise provided in subsection (d) of this section, a violation of subsection (a) of this section is a Class A1 misdemeanor if all of the following circumstances exist:

(1) The offense is committed on the premises of any of the following:

a. A facility that is owned or operated by an electric power supplier as defined in G.S. 62-133.8(a)(3) and that is either an electric generation facility, a transmission substation, a transmission switching station, a transmission switching structure, or a control center used to manage transmission operations or electrical power generating at multiple plant locations.

b. Any facility used or available for use in the collection, treatment, testing, storing, pumping, or distribution of water for a public water system.

c. Any facility, including any liquefied natural gas storage facility or propane air facility, that is owned or operated by a natural gas local distribution company, natural gas pipeline carrier operating under a certificate of public convenience and necessity from the Utilities Commission, municipal corporation operating a municipally owned gas distribution system, or regional natural gas district organized and operated pursuant to Article 28 of Chapter 160A of the General Statutes used for transmission, distribution, measurement, testing, regulating, compression, control, or storage of natural gas.

d. Any facility used or operated for agricultural activities, as that term is defined in G.S. 106-581.1.

...."

SECTION 7.(b) This section becomes effective December 1, 2014, and applies to offenses committed on or after that date.

REQUIRE WRITTEN CONSENT TO OPERATE ALL TERRAIN VEHICLES ON PRIVATE PROPERTY

SECTION 8.(a) G.S. 14-159.3 reads as rewritten:

"§ 14-159.3. Trespass to land on motorized all terrain vehicle.

(a) No person shall operate any motorized all terrain vehicle:

(1) On any private property not owned by the operator, without the written consent of the owner; or

(2) Within the banks of any stream or waterway, but excluding a sound or the Atlantic Ocean, the adjacent lands of which are not owned by the operator, without the consent of the owner or outside the restrictions imposed by the owner.

(a1) A landowner who gives a person written consent to operate an all terrain vehicle on his or her property owes the person the same duty of care that he owes a trespasser.

(b) A "motorized all terrain vehicle", as used in this section, is a two or more wheeled vehicle designed for recreational off-road use.

(c) A violation of this section shall be a Class 2 misdemeanor.

SECTION 8.(b) This section becomes effective December 1, 2014, and applies to offenses committed on or after that date.

ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES

SECTION 9. G.S. 156-82.1 is amended by adding a new subsection to read:

"§ 156-82.1. Duties and powers of the board of drainage commissioners.

(a) The board of drainage commissioners shall proceed with the levying of assessments, issuance of bonds and construction of canals, water retardant structures and other improvements and acquisition of equipment as approved by the court in the adjudication upon the final report of the board of viewers, either in the creation of the district or in subsequent proceedings authorized by Article 7B.

(b) The commissioners shall maintain the canals, water retardant structures, and all other improvements and equipment of the district.

(b1) No State statute or rule or local government ordinance for the establishment, preservation, or maintenance of riparian buffers for the protection of water quality shall apply to the construction, operation, maintenance, or repair of canals, water retardant structures, or other improvements under the control and supervision of a board of drainage commissioners.

...."

EFFECTIVE DATE

SECTION 10. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 366: NC Farm Act of 2014

2013-2014 General Assembly

Committee:	Senate Judiciary II, Sequential Referral To Agriculture/Environment/Natural Resources Added	**Date:**	June 19, 2014
Introduced by:	Reps. Langdon, Dixon, Brisson, S. Martin	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to Second Edition H366-CSTQ-81 [v.5]		

SUMMARY: ***The Proposed Committee Substitute (PCS) to House Bill 366 would amend various agricultural and environmental laws.***

[As introduced, this bill was identical to S387, as introduced by Sens. Barefoot, Cook, Walters.]

BILL ANALYSIS:

Section 1 of the PCS would provide that complaints to the Department of Environment and Natural Resources (DENR) concerning an agricultural operation, and all records accumulated in conjunction with the investigation of the complaint, are confidential and may be released only by court order. This section would also allow DENR to request additional information from a complainant and permit the Department to decline to accept or further investigate a complaint about an agricultural operation if an initial assessment of the complaint leads to a finding that the complaint is frivolous or was filed in bad faith. Section 1 would also direct DENR to adopt rules to develop a formal system for receiving, investigating, and responding to environmental complaints.

Section 2 of the PCS would prohibit cities and counties from adopting ordinances regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. This section would not limit the authority of DENR or the Environmental Management Committee (EMC) to enforce water quality standards. Cities and counties would be permitted to adopt ordinances to regulate fertilizers to protect water quality, provided that the ordinances have been approved by the EMC or DENR as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality. This section would not prohibit a city or county from regulating explosive or inflammable substances by ordinance.

Section 3 of the PCS would direct The Department of Public Safety to study North Carolina's participation in the Commercial Vehicle Safety Alliance North American Standard Inspection Program, a program which allows commercial vehicles that pass a roadside safety inspection to receive a decal indicating that another inspection is not needed for a certain period of time.

Section 4 of the PCS would define the "planting and harvesting season" and "planting and harvesting period" as January 1-December 31 of each year, for purposes of the agricultural operations exemption to the federal motor carrier regulations on hours of service.

Section 5 of the PCS would amend the chairmanship of the Agriculture and Forestry Awareness Study Commission to allow the President Pro Tempore of the Senate to appoint two members of the Senate

and the Speaker of the House to appoint two members of the House of Representatives to serve as co-chairs of the Commission.

Section 6 of the PCS would authorize the Commissioner of Agriculture to appoint as many Department of Agriculture and Consumer Services (DACS) law-enforcement officers as he or she deems necessary to carry out the Department's law-enforcement responsibilities. These officers must meet the training standards of the North Carolina Criminal Justice Education and Training Standards Commission and take the constitutional oath of office. Certain officers could be designated to have the powers and duties of forest rangers and the power to enforce the forest laws. The officers would have the authority to arrest, without warrant, any person or persons committing any crime in their presence or whom they have probable cause to believe has committed a crime in their presence. These powers are currently granted to forest law-enforcement officers.

Session Law 2008-107 requires State agencies, including DACS, to receive approval from the Director of the Budget to establish a new receipt supported position. The Department's State Fair Police are receipt supported positions, so DACS would have to receive approval from the Director of the Budget before creating any more of these positions.

Section 7 of the PCS would amend the statute for first degree trespass to provide that trespassing in an agricultural facility is a first degree trespass punishable as a Class A1 misdemeanor (the statute in question currently addresses trespass to locations such as electric generation facilities, water treatment facilities, and liquefied natural gas storage facilities). If the trespass is committed with the intent to disrupt the normal operation of the facility or if it places the offender or others at serious risk of bodily injury, the trespass is punishable as a Class H felony. This section would become effective December 1, 2014, and would apply to offenses committed on or after that date.

Section 8 of the PCS would require a person, before operating a motorized all-terrain vehicle on property not owned by the person, to obtain written consent from the owner of the property. A person given written consent under this section is owed the duty of care that a trespasser would be owed. Under current law, only verbal consent from the owner of the property is required.

This section would become effective December 1, 2014, and would apply to offenses committed on or after that date.

Section 9 would provide that no State statute or rule or local government ordinance concerning riparian buffers for the protection of water quality shall apply to the construction, operation, maintenance, or repair of canals, water retardant structures, or other improvements under the control and supervision of a board of drainage commissioners.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 1

HOUSE BILL 1027*

Short Title:	DWI Interlock Violation/DMV Hearing Site.	(Public)
Sponsors:	Representative Torbett (Primary Sponsor).	
	For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.	
Referred to:	Judiciary Subcommittee B.	

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES HEARING ON A LICENSE REVOCATION AS A RESULT OF A DRIVING WHILE IMPAIRED IGNITION INTERLOCK VIOLATION BE HELD IN THE LICENSEE'S COUNTY OF RESIDENCE, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-17.8(j) reads as rewritten:

"(j) Right to Hearing Before Division; Issues. – If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, except when the evidence of the violation is an alcohol concentration report from an ignition interlock system, the hearing shall be conducted in the county where the person resides. ~~and~~ The hearing must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and
(2) The person:
  a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or
  b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle in violation of an applicable alcohol concentration restriction prescribed by subdivision (b)(3) of this section.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25."

SECTION 2. This act becomes effective October 1, 2014, and applies to hearings requested on or after that date.

HOUSE BILL 1027:
DWI Interlock Violation/DMV Hearing Site

2013-2014 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 18, 2014
Introduced by:	Rep. Torbett	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1027 is a recommendation of the Joint Legislative Transportation Oversight Committee. The bill provides for DMV interlock violation hearings to be conducted in the county where the person resides rather than the county where the charge is brought.***

[This bill was reported favorably by the Senate Transportation Committee and is identical to S830, as introduced by Sens. Harrington, Daniel, which is currently in Senate Transportation.]

CURRENT LAW: Under G.S. 20-17.8, certain persons whose drivers licenses are revoked as a result of a conviction of driving while impaired are subject to an ignition interlock requirement as a condition for restoration of the drivers license. The ignition interlock requirement applies when a person whose license is revoked had an alcohol concentration of 0.15 or more at the time of the offense, had been convicted of another impaired driving offense within the 7 years preceding the current offense, was sentenced to Aggravated Level One Punishment (3 or more grossly aggravating factors, including a prior DWI offense within 7 years, driving while license revoked due to impaired driving, serious injury to another person, driving with a minor or disabled person in the vehicle), or the person's license was revoked for a conviction of habitual impaired driving. The length of the ignition interlock requirement depends upon the length of the revocation period; the requirement is one year if the original revocation period was one year, and seven years if the original revocation was a permanent revocation. A person who violates ignition interlock requirements but is not charged with or convicted of DWI will have his or her license revoked for one year. A person charged with a violation of ignition interlock requirements may request a DMV hearing. The hearing must be conducted *in the county where the charge is brought.*

BILL ANALYSIS: House Bill 1027 amends the statute governing DMV driver's license hearings held as a result of an ignition interlock violation. The bill specifies that in the case of a violation evidenced by an ignition interlock system report, the hearing will be conducted *in the county where the person resides.*

EFFECTIVE DATE: The bill would become effective October 1, 2014, and apply to hearings requested on or after that date.

O. Walker Reagan
Director

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